Supreme Court, U.S.
FILED

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No. _____

In The

# Supreme Court of the United States

October Term, 1997

CLIFFORD EUGENE DAVIS, JR., ET AL.,
and JOHNNIE A. JONES, Attorney,

*Petitioners,*

versus

EAST BATON ROUGE PARISH
SCHOOL BOARD, ET AL.,

*Respondents.*

**On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Fifth Circuit**

## PETITION FOR WRIT OF CERTIORARI

*Attorney for Petitioners:*

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73 pp.

## QUESTIONS PRESENTED

1. Whether the Court of Appeals and the District Court erred in failing to take cognizance of the fact, as borne out by the record, that when Petitioner became an associated "Attorney of Record" on September 27, 1962, Petitioner then became an associated Attorney for the original plaintiffs and the class which the District Court on May 25, 1960, enjoined Respondent "from requiring segregation of the races in the East Baton Rouge Parish Public Schools from and after such time as was necessary to arrange for admission of the original-named plaintiffs and members of their class to the schools on a racially nondiscriminatory basis with all deliberate speed"; and whether the District Court erred by failing to take cognizance of the fact that Petitioner was an associated "Attorney of Record" for the original plaintiffs and members of their class prior to the retroactive passage of "The Civil Rights Attorneys' Fees Awards Act of 1976," when, the requirement for keeping work "time slips" to inure to an award of Attorney's fees under the Act could not have been envisioned by Petitioner?

2. Whether the denial of attorney's fees to the plaintiffs and the members of their class, who are the "prevailing parties" in this 40-year-old continuing ongoing litigation, on Respondent's defense of **res judicata** defeats the purposes for which "The Civil Rights Attorneys' Fees Awards Act of 1976" was enacted; and whether the defense of **res judicata** is inapplicable to this case under the facts and law of this case as made and provided; and whether the denial of attorney's fees is unjust?

## LIST OF PARTIES

The following are parties to these proceedings, viz:

CLIFFORD EUGENE DAVIS, JR., ET AL.,

Plaintiffs-Petitioners

Intervenors-Petitioners

JOHNNIE A. JONES,

Attorney-Movant-Petitioner

and

EAST BATON ROUGE PARISH SCHOOL BOARD, ET AL., and its officers and/or members of the School Board.

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## PETITION FOR WRIT OF CERTIORARI

The petitioner, JOHNNIE A. JONES, Attorney, respectfully petitions the Court for a writ of certiorari to review the written Opinion of the United States Court of Appeals, Fifth Circuit, entered September 10, 1977.

## OPINION BELOW

The Opinion of the United States Court of Appeals, Fifth Circuit, was entered on September 10, 1997 (App. 1). (EXHIBIT-A)

## JURISDICTION

This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1); and this application is timely under 28 U.S.C. § 2101(c).

## CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment XIV, § 1.

## STATUTORY PROVISIONS INVOLVED

'The Civil Rights Attorney's Fees Awards Act of 1976,' 42 U.S.C. § 1988.

## STATEMENT OF THE CASE

### (i) Course of proceedings and disposition in Court Below

The plaintiffs, CLIFFORD EUGENE DAVIS, ET AL., commenced this action by filing their Complaint on February 29, 1956, in the Baton Rouge Division of the United States District Court Eastern Louisiana (now the Middle District of Louisiana), against the defendants, EAST BATON ROUGE PARISH SCHOOL BOARD, ET AL., for desegregation of its public school system.

Even though, Petitioner signature does not appear on the original Complaint which was filed on February 29, 1956, he had an active role from the inception of the Civil Rights movement to discontinue racial segregation in the public school system in the Parish of East Baton Rouge, Louisiana; and underwent disciplinary proceedings by the Bar Association for allegedly: (1) creating strife, (2) drumming up business, and (3) fermenting litigation, for all of which Petitioner was exonerated.

It was not until September 27, 1962, that Petitioner became an associated Attorney of Record, when his name was entered in the record on a Motion to Intervene Plaintiffs (App. 1), which was granted, upon filing, September 27, 1962 (App. 24); and later recalled by Order issued October 3, 1962 (App. 38), on a Motion to Recall Order Allowing Certain Plaintiffs to intervene (App. 35), which effectively added all top-level Local governmental officials as parties defendants to the suit.

The record clearly and unequivocally establishes that since September 27, 1962, Petitioner has been one of the

associated "Attorney of Record" for the original plaintiffs and the members of their class, the class having been certified by virtue of the Order issued by the Court on May 25, 1960 (App. 27, ¶ III); and the original plaintiffs and their members are all **clients of,** and represented by each and every one of the associated "Attorney of Record" in this continuing ongoing 40-year-old lawsuit to racially desegregate the public school system of East Baton Rouge Parish, Louisiana.

The recall of the Order allowing the intervention of parties plaintiffs did not strip the associated "Attorneys of Record" of clients in anywise. Even the parties sought to be intervened, on September 27, 1962, were members of the class represented by the originally named plaintiffs, who are the "prevailing parties" in this lawsuit; and "who must recover attorneys' fees," as this Court said in its Opinion (App. 1).

It is undisputed that Petitioner did **"from time-to-time sign pleadings"** (R. Vol. 2, p. 263); but the Respondent contends lack of knowledge and the extent of that involvement and the actual role played by Petitioner.

The affirmative defense of **res judicata** is inapplicable to the issues suggesting an award of attorneys' fees, under "The Civil Rights Attorneys' Fees Awards Act of 1976," on behalf of the original plaintiffs and members of their class who are the "prevailing parties" entitled to recover an award of attorney's for Petitioner, their only remaining active "Attorney of Record" in this continuing ongoing 40-year-old lawsuit to desegregate the public school system of East Baton Rouge Parish, Louisiana.

**(ii) Statement of facts**

Petitioner, since September 27, 1962, has been and is the only remaining active "Attorney-of-Record" for the original plaintiffs and members of their class in this continuing ongoing 40-year-old school desegregation lawsuit to desegregate the public school system of East Baton Rouge Parish, Louisiana; and in which there have not been an award to any "Attorney of Record" for the original plaintiffs and members of their class, the "prevailing parties" who this Court has said "must recover attorneys' fees" (R. Vol. 2, p. 280, at p. 282). No attorney has been paid.

## SUMMARY OF THE ARGUMENT

The record clearly and unequivocally establishes Petitioner to be an "Attorney of Record" for the original plaintiffs and the members of their Class since September 27, 1962, when he was duly associated as such; and since that time has remained of record and, "from time-to-time," appeared in Court in representation of the original plaintiffs and members of their class, the "prevailing parties," in this continuing ongoing 40-year-old lawsuit, "who must recover attorneys' fees" in accordance with the provisions of "The Civil Rights Attorneys' Fees Awards Act of 1976," 42 U.S.C. § 1988.

The retroactive enactment of "The Civil Rights Attorneys' Fees Awards Act of 1976" did not foreshadow the requirement for keeping hourly "time slips" for work

performed by attorneys who had made themselves available to handle, or were actually handling cases for Civil Rights plaintiffs to assure their effective access to the judicial process being persons with civil rights grievances, the purposes for which the Attorneys' Awards Act was passed.

The affirmative defense of **res judicata** is inapplicable to a denial of attorneys' fees to Petitioner on his interim Motion for Attorneys' Fees, in this continuing ongoing 40-year-old lawsuit for the desegregation of the public school system of East Baton Rouge Parish, Louisiana, where it is clearly and unequivocally shown that since September 27, 1962, Petitioner remains the only currently continuing active "Attorney of Record" for the original plaintiffs and members of their class, the "prevailing parties" within the contemplation of "The Civil Rights Attorneys Fees Awards Act of 1976"; and "who must recover"; otherwise, it would be unjust.

## ARGUMENT ON THE ISSUES

**THE DISTRICT COURT AND THE COURT OF APPEALS ERRED BY REFUSING TO AWARD ATTORNEYS' FEES TO PETITIONER AND BY NOT TAKING COGNIZANCE OF THE FACT THAT PETITIONER WAS AN ASSOCIATE ATTORNEY OF RECORD FOR THE ORIGINAL PLAINTIFFS AND MEMBERS OF THEIR CLASS PRIOR TO THE RETROACTIVE ENACTMENT OF "THE CIVIL RIGHTS ATTORNEYS' FEES AWARDS ACT OF 1976" WHICH WAS PASSED TO MAKE AVAILABLE COMPETENT ATTORNEYS TO CIVIL RIGHTS PLAINTIFFS WITHOUT FORESHADOWING THEIR NEED TO KEEP "TIME SLIPS" OF HOURS WORKED TO INURE THE BENEFITS UNDER THE ACT FOR PREVIOUS PERFORMANCES OF THE PURPOSES FOR WHICH THE ACT WAS PASSED.**

On September 27, 1962, when Petitioner was associated as "Attorney of Record" (App. 24), this action, as of May 25, 1960 (App. 27, ¶ III), had already been certified as "class action." Therefore, the record clearly and unequivocally establishes that Petitioner is "Attorney of Record" for the original plaintiffs and members of their class; and, as of now (currently), the only remaining active "Attorney of Record" for the original plaintiff and members of their class in this 40-year-old continuing ongoing lawsuit for the racial desegregation of the public school system of East Baton Rouge Parish, Louisiana.

The purposes of "The Civil Rights Attorneys' Fees Awards Act of 1976" were to make sure that competent counsel would be available to take and handle cases for

Civil Rights plaintiffs and to assure effective access to the judicial process for persons with Civil Rights grievances. *Blanchard v. Bergeron* (1989), 489 U.S. 86, 109 S. Ct. 939, 103 L.Ed.2d 67; and attorneys' fees under "The Civil Rights Attorneys' Fees Awards Act of 1976" would not be required to append "time slips" for work performed prior to the enactment in October of 1976, which has retroactive application. *Alberti v. Sheriff of Harris County* (SD Tex., 1987), 688 F. Supp. 1176, mod. 688 F. Supp. 1210.

The original plaintiffs and the members of their class are the **prevailing parties** within the contemplation of "The Civil Rights Attorneys' Fees Awards Act of 1976," for they can point to resolution of dispute which changed legal relationship between them and the defendants. *Texas State Teachers Assn. v. Garland Independent School Dist.* (1989) 489 U.S. 782, 109 S. Ct. 1486, 103 L.Ed.2d 866.

It is the presumption that the Court will allow the prevailing parties to recover attorneys' fees under "The Civil Rights Attorneys' Fees Award Act of 1976" (42 U.S.C. § 1988); although, it states that Court may allow attorneys' in its discretion, that discretion is not without limit; "prevailing party" should ordinarily recover attorneys' fees under the Act, unless special circumstances would render award unjust. *Blanchard v. Bergeron* (1989), 489 U.S. 87, 109 S. Ct. 939, 103 L.Ed.2d 67; *Hensley v. Eckerhart* (1983), 461 U.S. 424, 103 S. Ct. 1933, 76 L.Ed.2d 40; *Texas State Teachers Assn. v. Garland Independent School Dist.* (1989), 489 U.S. 782, 109 S. Ct. 1486, 103 L.Ed.2d 866.

**THE AFFIRMATIVE DEFENSE OF RES JUDICATA IS INAPPLICABLE TO DISALLOW ORIGINAL PLAINTIFFS AND MEMBERS OF THEIR CLASS AN AWARD OF ATTORNEYS' FEES FOR THEIR ATTORNEY OF RECORD SINCE SEPTEMBER 27, 1962, IN THIS 40-YEAR-OLD ONGOING SCHOOL DESEGREGATION CASE WHERE IT IS SHOWN THAT THEY ARE THE PREVAILING PARTIES WHO MUST RECOVER; OR OTHERWISE IT WOULD BE UNJUST AND A DENIAL OF EQUAL PROTECTION OF THE LAWS.**

The prior "Motion for Attorney's Fees" was brought on behalf of the original plaintiffs and members of their class for their "Attorney of Record." Petitioner, JOHNNIE A. JONES, who has continued to be their attorney of record since September 27, 1962, when he was associated as such with their attorneys who had signed the original Complaint (App. 4), this action having been previously determined to be a class action by the **order** (App. 27, ¶ III) issued by the District Court on May 25, 1960; and it is undisputed that the persons (parties) named in the Motion to Intervene as Plaintiffs (App. 24) and the Intervenors' Complaint (App. 26) were (are) all members of the class as had been previously determined by the referenced **order** of the District Court.

"The Civil Rights Attorneys' Fees Awards Act of 1976" is a "tool that ensures the vindication of important civil and constitutional rights". *City of Riverside v. Rivera* (1986), 477 U.S. 561, 106 S. Ct. 2686, 91 L.Ed.2d 466; and it does not create any independent substantive rights to a cause of action. *McLaughlin v. City of LaGrange* (C.A. 11, 1981), 662 F.2d 1385, rehearing denied, 668 F.2d 536, cert. denied, 456 U.S. 979, 102 S. Ct. 2249, 72 L.Ed.2d 856.

This Honorable Court has said, in addressing issues arising under specially enacted Civil Rights enactments by Congress, that:

> In civil rights cases, the powers of the federal courts should be used to "facilitate and not to hinder proceedings in vindication of civil rights. *Brown v. City of Meridian* (C.A. 5, 1966), 356 F.2d 602; *Lefton v. City of Hattiesburg, Miss.* (C.A. 5, 1964), 333 F.2d 280; and, also, cf. *Moor v. Alameda County, Cal.* (1973), 411 U.S. 693, 93 S. Ct. 1785, 36 L.Ed.2d 596, reh. denied, 412 U.S. 963, 93 S. Ct. 2999, 37 L.Ed.2d 1012.

It is submitted that the affirmative defense of **Res Judicata** does not attach to a denied interim Motion for Attorney's Fees, which was denied on inapplicable procedural technicalities in this continuing ongoing 40-year-old lawsuit to racially desegregate the public school system of East Baton Rouge Parish, Louisiana, where it is shown that the parties seeking an award of attorney's fees for their "Attorney of Record" are the original plaintiffs and members of their class, "the parties who must recover" attorneys' fees under "The Civil Rights Attorneys' Fees Awards Act of 1976" because they have promoted the **purposes** for which the Attorneys' Fees Awards Act of 1976 was retroactively enacted by Congress; and therefore they are the "**prevailing parties**" because they have inured to (or rather, have achieved) some of the benefit they sought in bringing this lawsuit; and have materially altered the relationship of the parties (*Hensley v. Eckerhart* (1983), 461 U.S. 424, 103 S. Ct. 1933, 76 L.Ed.2d 40) for the betterment of the community – and society as a whole.

The enactment of "The Civil Rights Attorneys' Fees Awards Act of 1976" is not to provoke prolonged litigation, nor to spawn a second litigation of significant dimension. Cf. *Texas Teachers Assn. v. Garland School Dist.* (1989), 489 U.S. 782, at 791.

## CONCLUSION

1. Petitioner, JOHNNIE A. JONES, was associated as an "Attorney of Record" for the original plaintiffs and the members of their class on September 27, 1962, prior to the enactment of "The Civil Rights Attorneys' Fees Awards Act of 1976," which was enacted into law, **retroactively**, on October 19, 1976; and foreshadowed no notice of requirement that prior and ongoing Civil Rights plaintiffs had to produce "time slips" of work performed on their behalf by Petitioner, or any Attorney, PREDATING THE PASSAGE OF THE ACT, especially, where it is established by the record that the Petitioner, JOHNNIE A. JONES, has remained their "Attorney of Record" in this continuing ongoing 40-year-old lawsuit having for its legal purpose the racial desegregation of the public school system of East Baton Rouge Parish, Louisiana.

2. The original plaintiffs and members of their class are the **"prevailing parties,"** within the meaning of "The Civil Rights Attorneys' Fees Awards Act of 1976," who must recover; and would be unjust to deny to them an award of attorney's fees where it is clearly and unequivocally shown (established by the record) that they bore the brunt of the Civil Rights struggle to racially desegregate

the public school system of the Parish of East Baton Rouge, State of Louisiana.

3. "The Civil Rights Attorneys' Fees Awards Act of 1976" does not create an independent cause of action in (or to) this continuing ongoing 40-year-old lawsuit to racially desegregate the public school system of East Baton Rouge Parish, Louisiana. Therefore, the affirmative defense of **res judicata** has no application in this case as made and provided; and the District Court and the Court of Appeals erred in their **Ruling on Motion** for Attorney's Fees (App. 42), the ruling from which this appeal is taken (App. 1); and, therefore, should be reversed, set aside, vacated, and remanded, or be replaced with a judgment of this Court, all in accordance with law.

Respectfully submitted,

*Attorney for Original Plaintiffs and Members of Their Class and for Petitioner, Johnnie A. Jones,* **pro se:**

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DATE: December 8, 1997

**APPENDIX**

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

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No. 96-31074
Summary Calendar

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CLIFFORD EUGENE DAVIS, JR. and
UNITED STATES OF AMERICA,

Plaintiffs,

JOHNNIE A. JONES,

Movant-Appellant,

versus

EAST BATON ROUGH PARISH
SCHOOL BOARD, a Corporation,

Defendant-Appellee.

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Appeal from the United States District Court for
the Middle District of Louisiana
(56-CV-1662)

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(Filed Sep. 10, 1997)

Before REAVLEY, JOLLY and HIGGINBOTHAM, Circuit Judges.

PER CURIAM:*

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* Pursuant to 5TH CIR. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Johnnie Jones appeals an order denying his request for over $1.2 million in attorney's fees for his work in this decades-old desegregation suit, over which the district court has retained jurisdiction. We conclude that we have appellate jurisdiction under the collateral order doctrine, *see Walker v. U.S. Dept. of Housing and Urban Dev.*, 99 F.3d 761, 766-67 (5th Cir. 1996), and affirm.

In 1981 Jones filed a similar request for fees. The district court denied the motion, reasoning that Jones had not complied with the requirements of *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974), and related cases. Jones appealed the order and we affirmed in an unpublished opinion. *Davis v. East Baton Rough Parish School Bd.*, No. 81-3287 (5th Cir. Oct. 24, 1983). We agreed with the district court that his fee application was "totally inadequate" under *Johnson*. *Davis, supra,* at 3.

In 1996 Jones filed a motion for attorney's fees which is the subject of the present appeal. The district court properly denied the motion, since both the district court and this court are bound by the prior appellate decision under the law of the case doctrine. That doctrine "precludes reexamination of issues decided on appeal, either by the district court on remand or by the appellate court itself upon a subsequent appeal." *Quest Medical, Inc. v. Apprill,* 90 F.3d 1080, 1094 (5th Cir. 1996).

Recognized exceptions to the law of the case doctrine are that "evidence in the subsequent trial is substantially different, the prior decision was clearly erroneous and would work manifest injustice, or controlling authority has in the interim made a contrary rule of law applicable." *Id.* The only conceivable exception which might

apply here is that Jones has somehow augmented his fee request with additional evidence.

The renewed fee request, however, remains totally inadequate to support an award. We noted in the prior appeal that Jones "does not even list his clients, although they are the 'parties' who must recover attorneys' fees." *Davis, supra,* at 3. In his renewed motion for fees, Jones again fails to list which plaintiffs he represented, fails to move for fees on their behalf, and instead requests fees as "movant in proper person." The fee request fails to delineate, among other *Johnson* factors, the novelty and difficulty of the questions presented in the case, whether the fee agreement with the clients was fixed or contingent, or the results obtained. *See Johnson,* 488 F.2d at 718.

While, unlike the first fee request, Jones breaks down his work into various dated entries in an affidavit, those entries are implausible on their face. Many of the entries indicate that Jones worked more than 24 hours in a single day. By way of example, Jones claims he spent 157.5 hours on July 23, 1970 (at a requested rate of $250 an hour) on a "memorandum opinion and order." Further, the only work Jones claims to have done after April 16, 1981, the date of his first fee motion, involved his unsuccessful quest for attorney's fees. Accordingly, we follow our prior decision.

AFFIRMED.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
BATON ROUGE DIVISION

CLIFFORD EUGENE DAVIS, JR.,
a minor, by his father and
next friend Clifford Eugene
Davis, Sr.

CYNTHIA C. DAVIS, a minor,
EDDIE L. DAVIS, a minor,
FREDERICK T. DAVIS, a minor,
by their father and next friend
Fred Davis, Jr.,

LLOYD DAVIS, a minor,
SADDIE MAE DAVIS, a minor,
STELLER MAE DAVIS, a minor and
JOHN DAVIS, JR., a minor,
by their father and next friend,
John Davis, Sr.,

JULIETTE WELLS, a minor,
PATRICIA A. WELLS, a minor,
SANDRA G. WELLS, a minor,
by their grandfather and
next friend, George Eames,

CHARLES THERON FIELDS,
a minor,
MARY ANN FIELDS, a minor,
by their father and next friend,
Charlie Fields,

FRANCIS OTIS FRANKLIN,
a minor, by his father and
next friend, Willie Franklin,

CIVIL ACTION
NO. 1662

(Filed
Feb. 29, 1956)

ENOS LLOYD LEE, a minor,
by his father and next friend,
Curtis Lee,

SAMUEL LEE MONCRIEF, a minor,
by his father and next friend,
Louis Moncrief,

ALICIA JOYCE MOSS, a minor,
CHARLOTTE MARIE MOSS,
a minor, JOE CECIL MOSS,
a minor,
HOWARD DOUGLAS MOSS,
a minor,
PATRICIA ANN MOSS, a minor,
WAYNE ALLEN MOSS, a minor,
by their father and next friend,
N. F. Moss,

EARNEST C. PAYNE, a minor,
JAMES E. PAYNE, a minor,
RICHARD PAYNE, Jr., a minor,
by their father and next friend,
Richard Payne, Sr.,
ALICE GAIL WHITE, a minor,
FRANCIS YVONNE WHITE,
a minor, by their father and
next friend, Frank White,

CARL L. WILFORD, a minor,
JOHNNY L. WILFORD, a minor,
ROBERT WILFORD, a minor,
ROWEMAN L. WILFORD, a minor,
TOMMY RAY WILFORD, a minor,
WILMER D. WILFORD, a minor,
by their father and next friend,
Louis W. Wilford,

MAUDRA ANN HOFFMAN,
a minor,
WINNFIELD HOFFMAN, a minor,
by their next friend,
(Mrs.) Bernice Williams,
a feme sole,

WALTER WILLIAMS, a minor,
ALICE RUTH PETERSON, a minor,
by their father and next friend,
Walter Williams, Sr.,

PLAINTIFFS

VS.

EAST BATON ROUGE PARISH
SCHOOL BOARD,
A Corporation, and,
LLOYD FUNCHESS, as
Superintendent
of Public Schools in
East Baton Rouge Parish

DEFENDANTS

## COMPLAINT

### I.

### JURISDICTION

(a). The jurisdiction of this Court is invoked under Title 28, Section 1331, United States Code, this being an action that arises under the Fourteenth Amendment of the Constitution of the United States, Section 1, wherein the matters in controversy exceed the sum of Three Thousand ($3,000.00) Dollars, exclusive of interest and costs, and Title 42, Sections 1981 and 1983, United States Code, this being an action in which citizens of the United States contend that they have been, and are now being denied equal rights under the Constitution and laws of the United States and thus deprived of their civil rights in violation of the Constitution and laws of the United States.

(b). The jurisdiction of this Court is further invoked under Title 28, Section 1343(3), United States Code, this being an action for the redress of the deprivation under color of state laws, of rights, privileges and immunities secured to them as citizens of the United States by the Constitution and laws of the United States.

II.

INJUNCTIVE RELIEF

The jurisdiction of this court is also invoked under Title 28, Sections 2281 and 2284, United States Code, this being an action for injunctive relief, both temporary and permanent, to enjoin and restrain the enforcement, execution and operation of certain unconstitutional statutes and constitutional provisions of the State of Louisiana, and certain arbitrary, unreasonable and unlawful rules and regulations promulgated, issued and enforced by an administrative agency and instrumentality of the State of Louisiana, made, issued and enforced pursuant to or in purported reliance upon the state statutes and constitutional provisions of the State of Louisiana which will appear more fully hereinafter.

III.

DECLARATORY JUDGMENT

This is a proceeding under Title 28, Sections 2201 and 2202, of the United States Code for a declaratory judgment. All of the parties to this controversy, both plaintiffs and defendants, are citizens of the United States and of the State of Louisiana, domiciled in East Baton Rouge

Parish, Louisiana, and within the territorial limits of the jurisdiction of this Honorable Court. Plaintiffs, who are minors, seek by and through their parents and grand parents, as their next friends, a definition and a declaration of the legal rights and relations of the parties in the subject matter in controversy, to wit, the questions:

(a). whether the acts and deeds of defendants or either of them, while acting or purporting to act pursuant to the laws of the State of Louisiana, or while acting under color of the laws of the State of Louisiana, of providing public school houses, grounds, and facilities for plaintiffs and the members of the class of persons that they represent on a separate and segregated basis because of their race and color, and assigning plaintiffs and the members of the class of persons that they represent to separate, segregated public schools of East Baton Rouge Parish, on the basis and classification of [illegible] of their race and color, and of forcing and compelling plaintiffs and the members of the class of persons that they represent to register, enroll, enter, attend classes and receive public school instruction at separate, segregated public schools within the East Baton parish, because of their race and color, deny and deprive plaintiffs and the class of persons that they represent their rights and privileges as citizens of the United States and of the State of Louisiana, and the equal protection of laws secured to them by the Fourteenth Amendment of the Constitution of the United States, and their civil rights as secured to them by Sections 1981

and 1983, of Title 42, United States Code, and are, for those reasons unconstitutional and void?

(b). whether the acts and deeds of the defendants, or either of them, while acting or purporting to act pursuant to the laws of the State of Louisiana, of denying and refusing minor plaintiffs and the members of the class of persons that they represent the right and privilege of registering, enrolling, entering, attending classes and receiving instruction in public schools of East Baton Rouge Parish, because of their race and color, at the same time and under the same conditions and circumstances that all other minors of the said parish are permitted to register, enroll, enter, attend classes and receive instruction by defendants, deny to minor plaintiffs and the members of the class of persons that they represent, rights and privileges as citizens of the United States, and the equal protection of laws secured to them by the Fourteenth Amendment of the Constitution of the United States, or their civil rights as secured to them by Sections 1981 and 1983, of Title 42, United States Code and are for those reasons unconstitutional and void?

(c). whether the acts and deeds of the defendants, or either of them, while acting or purporting to act pursuant to the laws and statues [sic] of the State of Louisiana, or while acting under color of Louisiana laws, of enforcing and executing Article 12, Section 1, of the Constitution of the State of Louisiana, and Sections 81.1 and 331, of

Title 17, Louisiana Revised Statutes, against plaintiffs and the members of the class of persons that they represent because of their race and color, deny or deprive plaintiffs and the members of the class of persons that they represent their rights and privileges as citizens of the State of Louisiana and of the United States, or the equal protection of laws secured to them by Section 1, of the Fourteenth Amendment of the Constitution of the United States, or their civil rights secured to them by Sections 1981 and 1983, of Title 42, United States Code, and are for those reasons unconstitutional and void?

## IV.

## FACTS

1. Adult plaintiffs herein allege that they and each of them, are citizens of the United States and of the State of Louisiana; that they are residents of East Baton Rouge Parish, Louisiana, domiciled at the City of Baton Rouge, in East Baton Rouge Parish; that they are, each of them, members of the Negro or "colored" race and of African descent; that they are parents, or grandparents of the minors that they represent herein as next friends.

2. Minor plaintiffs allege that they, and each of them, are minors and of public school age according to Louisiana laws; that they are citizens of the United States and of the State of Louisiana; that they are residents of East Baton Rouge Parish, Louisiana, domiciled at the City of Baton Rouge, in East Baton Rouge Parish; that they, and each of them, are members of the Negro or "colored"

race and of African descent; that they are the children and grand-children of the adults who represent them herein as next friend, and that they bring this action by their next friends pursuant to Rule 17(o), Federal Rules of Civil Procedure.

3. Minor plaintiffs allege that they, and each of them, are between the ages of seven (7) and sixteen (16) years and subject to the compulsory school attendance laws of the State of Louisiana (Title 17:221, La. Rev. Stats.); that they have met all lawful health and medical requirements for admission to the public free schools of the State of Louisiana and particularly of the public schools within Each Baton Rouge Parish, Louisiana; that they, and each of them are in all material respects eligible to register, enroll, enter, attend classes and receive instructions in the public free schools of East Baton Rouge Parish and particularly the public schools within the City of Baton Rouge, East Baton Rouge Parish, Louisiana.

4. Minor plaintiffs allege that they bring this action in their own behalf and in behalf of all other Negro minors within East Baton Rouge Parish who are similarly situated because of race and color; that they, and each of them, are members of a class of persons who are segregated on the basis of race and color and discriminated against because of their race and color in the use and enjoyment of the public schools within East Baton Rouge Parish and particularly in the public schools in the City of Baton Rouge, East Baton Rouge Parish, Louisiana by the defendant East Baton Rouge Parish School Board and its Superintendent of Schools, the defendant Lloyd Funchess; that the members of the class of persons that

they represent are so numerous as to make it impracticable to bring them all before this Court; that they, as members of the class can and will adequately and fairly represent all of the members of the class; that the character of the right sought to be enforced and protected for the class is several and that there is a common question of law and fact affecting the several rights of all of the class and a common relief is sought; that they bring this action as a class action pursuant to Rule 23(a)(3), Federal Rules of Civil Procedure.

5. Plaintiffs allege that the defendant East Baton Rouge Parish School Board was created by Act of the Louisiana Legislature and constituted a body corporate with power to sue and be sued under the name and style East Baton Rouge Parish School Board, and that citation may be served upon the president of the said school board and in his absence on the vice-president, (Title 17: 51 & 58, La. Rev. Stats.); that it is sued herein in its corporate name and capacity.

6. Plaintiffs allege that the defendant East Baton Rouge Parish School Board possesses powers vested in it by Act of the Louisiana Legislature to determine the number of schools to be opened in East Baton Rouge Parish and their location; to select and employ teachers and to fix their salaries; to make rules and regulations for the government of its affairs, including rules regulating the admission of children to the schools under its control, (Title 17; 81, La. Rev. Stats.).

7. Plaintiffs allege that the defendant East Baton Rouge Parish School Board, a body corporate, is an administrative agency of the State of Louisiana and an

instrumentality thereof that exercises functions and performs duties under the general laws of the State. (Acts 1946, No158; Amended Acts 1950, No. 2; 17;58, La. Rev. Stats.).

8. Plaintiffs allege that the defendant Lloyd Funchoss is the duly elected, qualified and functioning Superintendent of public schools in East Baton Rouge Parish, Louisiana; that he is domiciled in East Baton Rouge Parish, Louisiana and within the territorial limits of the jurisdiction of this Court; that he is an agent, servant and employee of the East Baton Rouge Parish School Board and an agent and administrative officer of the State of Louisiana; that he holds office and performs duties and functions under the general education laws of the state, and that he is sued in his official capacity. (Acts 1954, No. 556; 17:81,1, La. Rev. Stats.).

9. Plaintiffs allege that the organic law of Louisiana, as declared in the Constitution of the State, directs that:

> "The Legislature shall provide for a public educational system of the State to consist of all public schools and all institutions of learning operated by state agencies and enact laws on all matters regarding the terms and qualifications for admission to the public schools. . . .
>
> "All public elementary and secondary schools in the State of Louisiana shall be operated separately for white and colored children. This provision is made in the exercise of the state police power to promote and protect public health, morals, better education and the peace and good order of the State, and not because of race. The Legislature shall enact laws to enforce the state police power in this regard. "(As

amended Acts 1932, No. 141; Acts 1944, No. 320; Acts of 1954, No. 752); Art. 12, Sec. 1, Constn. La.).

Plaintiffs allege that the foregoing is unconstitutional and void for the reason that it violates the Constitution and laws of the United States.

10. Plaintiffs allege that the Legislature of Louisiana while acting in obedience to the Constitutional provision of the State set out in paragraph 9 hereinbefore, has enacted a state statute that vests each parish superintendent of schools in the state, including the defendant Lloyd Funchess herein, with power and authority to determine each year:

"* * *

the particular public school within each parish to be attended by each school child applying for admission to public schools. No school child shall be entitled to be enrolled or to enter into a public school until he has been assigned thereto in accordance with the provisions of this section. In the event of dissatisfaction with the school assignment made by the superintendent, the parents or next of kin to the child affected, within ten days from the date of the assignment may apply to the school superintendent for a hearing to have said child assigned to some other public school in the parish, in which case the superintendent shall grant a hearing, and within thirty days after the conclusion of said hearing, the superintendent shall hand down a decision in writing either sustaining his school assignment in question or changing same. The action of the parish superintendent shall be reviewable by the parish school board upon

application of any person paying advalorom taxes for the support and maintenance of the public schools or on the application of any other party in interest. Any such application for review shall be filed with the parish school board within thirty days from the day the action complained of was taken and within sixty days thereafter, said parish school board shall hold a hearing at which evidence shall be taken down and transcribed, the cost thereof to be paid for by the party making said application prior to submission of the matter to the school board. The school board shall have the right to require applicant to furnish bond for costs within a reasonable sum, properly secured, prior to the holding of said hearing. The parish school board shall consider the evidence so adduced and as soon as practicable render its decision in writing. Any person, having applied for and secured a hearing by the parish school board shall have the right to apply to the district court of the domicile of the said school board and the right to appeal from the judgment of the district court to the appropriate court of appeal, provided, however, that such right to apply to the district court shall not exist until said party shall have complied with the provisions thereof, and shall have exhausted the administrative remedies provided for herein.

"Each school board throughout the state shall have authority to adopt rules and regulations governing the hearing and appeals provided for herein." (Acts 1954, No. 556, Sec. 1;17:81.1, Soc. Rev. Stats.).

Plaintiffs allege that the foregoing is a cunning device to implement and make operative the unconstitutional provision of the Constitution of Louisiana set out in paragraph 9 hereinbefore and that it is unconstitutional and void, for the reason that it offends the provisions of the Fourteenth Amendment of the Constitution of the United States.

11. Plaintiffs allege that they, and each of them, have petitioned the defendant Lloyd Funchess, as superintendent of public schools within the East Baton Rouge Parish, and the defendant East Baton Rouge/Parish School Board to permit them, and each of them, and the members of the class of persons that they represent to matriculate, register, enroll, enter, attend classes and receive instruction in the public schools of the said parish on a non-segregated and non-discriminatory basis without any distinctions being made to them, or the members of the class of persons that they represent, because of their race and color; that the defendants, and each of them, have failed and refused to permit plaintiffs and the members of the class of persons that they represent to matriculate, register, enroll, enter, attend classes and receive instruction in the public elementary and secondary schools of East Baton Rouge Parish on a non-segregated and non-discriminatory basis; that the defendant Lloyd Funchess, while acting in his official capacity as superintendent of public schools in East Baton Rouge Parish, and as an agent, servant and employee of the defendant East Baton Rouge Parish School Board, and as an agent and administrative officer of the State of Louisiana has determined the particular school or schools within the East Baton Rouge Parish at which Plaintiffs

and the members of the class of persons that they represent shall attend; that the determination was made on the basis and classification of race and color of plaintiffs and the members of the class of persons that they represent contrary to and in violation of the Constitution and laws of the United States; that the defendant Lloyd Funchess, while acting in his official capacity as set out hereinbefore in this paragraph, has assigned plaintiffs and the members of the class of persons that they represent are now assigned to particular public schools on the basis and classification of their race and color by defendants and each of them, and that they will continue to be so assigned in the future by defendants contrary to the Constitution and laws of the United States unless defendants and each of them are enjoined and restrained from such unlawful acts and deeds by this Honorable Court.

12. Plaintiffs allege that the Legislature of Louisiana has further provided that:

> "The State Board of Education shall not approve any public schools which may violate the provisions of this Sub-part nor shall any of the state colleges or universities recognize any certificate of graduation from such public school which may violate the provisions of this Sub-part as entitling the holder thereof to admission. (Acts 1954, No. 555, Sec. 2; 17;332, La. Rev. Stats.).

And that:

> "No Free school books or other school supplies shall be furnished, nor shall any state funds for the operation of school lunch programs, or any other school funds be furnished or given to any public elementary or secondary

> school which may violate the provisions of this Sub-part as above. (Acts 1954, No. 555, Sec. 3; 17;333, La. Rev. Stats.).

And further that:

> "Any person, firm or corporation violating any of the provisions of this Sub-part shall be deemed guilty of a misdemeanor and upon conviction therefor by a court of competent jurisdiction for each such violation shall be fined not less than five hundred nor more than one thousand dollars, or sentenced to imprisonment in the parish jail not less than ninety days nor more than six months, or both, fined and imprisoned as above, at the discretion of the Court. (Acts. 1954, No. 555, Sec. 4; 17;334, La. Rev. Stats.).

Plaintiffs allege that all of the above statutes of Louisiana are unconstitutional and void for the reason that they contravene and violate the provisions of the Fourteenth Amendment of the Constitution of the United States and the Civil Rights Statutes of the United States as set out in Title 42, United States Code.

13. Plaintiffs allege that the defendants Lloyd Funchess and the East Baton Rouge Parish School Board, and each of them, have enforced in the past, are now enforcing, and will continue to enforce in the future, the unconstitutional statutes and constitutional provisions of the State of Louisiana set out in full in paragraphs 9, 10 and 12 hereof against plaintiffs and the members of the class of persons that they represent because of their race and color contrary to and in violation of the Constitution and laws of the United States, unless defendants, and

each of them, are restrained and enjoined by this Honorable Court.

14. Plaintiffs allege that because of the unlawful acts and deeds of the defendants, and each of them, of failing and refusing to permit plaintiffs and the members of the class of persons that they represent to matriculate, register, enroll, enter, attend classes and receive instruction in the public elementary and secondary schools of East Baton Rouge Parish on a non-segregated and non-discriminatory basis and without any distinctions being made to them because of their race and color; and of determining the particular public elementary and secondary schools in the said parish at which plaintiffs and the members of the class of persons that they represent may enter and attend and receive instruction on the basis and classification of their race and color; and of assigning plaintiffs and the members of the class of persons that they represent to the public elementary and secondary schools of the said parish on the basis and classification of their color; and of enforcing against plaintiffs and the members of the class of persons that they represent the provisions of Title 17, Sections 81.1, 331, 332 , 333, and 334, Louisiana Revised Statutes, (Acts of 1954, No. 555 and 556), and Article 12, Section 1, of the Constitution of Louisiana, (Acts 1954, No. 752), because of their race and color, that they have in the past, are now and will continue in the future to suffer irreparable harm, injury and damage and be deprived of their rights and privileges as citizens of the United States, and denied equal protection of laws, and of due process of law contrary to the Fourteenth Amendment of the United States, and deprived of their civil rights under Title 42, of the United States Code;

that they have no plain, adequate, or efficient remedy at law to redress the unlawful wrongs of defendants other than this action for declaratory judgment and injunctive relief; that any other remedy to which they could be remitted would be attended by grave uncertainties and delays and would amount to substantial denial of relief; would involve a multiplicity of suits and cause plaintiffs and the members of the class of persons that they represent further irreparable harm and injury and occasion undue hardship, vexation and delay.

V.

PRAYER

WHEREFORE, the promises considered, plaintiffs pray that upon the filing of this Complaint, as may appear just and proper to the Court:

1. That a Statutory Three-Judge District Court be convened pursuant to Sections 2281 and 2284, Title 28, United States Code;

2. That this cause be advanced on the docket of the Court and set for a speedy hearing according to law, and upon such hearing that this Court enter a temporary injunction enjoining and restraining the defendant Lloyd Funchess, as president of the public elementary and secondary schools in East Baton Rouge Parish, and the East Baton Rouge Parish School Board, a corporation, and each of them, their agents, servants, employees and successors in office from further determining, on the basis of their race or color, the particular public elementary or secondary school in East Baton Rouge Parish, Louisiana,

at which plaintiffs and the members of the class of persons that they represent may attend or from assigning plaintiffs and the members of the class of persons that they represent to public elementary or secondary schools in East Baton Rouge Parish, Louisiana, on the basis of their race and color.

3. That upon final hearing of this cause on its merits, this Honorable Court will:

(a). enter a final judgment and decree that will declare and define the legal rights and relations of the parties in the subject matter here in controversy;

(b). enter a final judgment, order and decree that will declare that all constitutional provisions and statutes of the State of Louisiana, and particularly Sections 81.1, 331, 332, 333 and 334 of Title 17, Louisiana Revised Statutes, and Article 12, Section 1, of the Constitution of Louisiana, that require, permit, or sanction the operation of public elementary or secondary schools in East Baton Rouge Parish, Louisiana, separately for white and colored children, are unconstitutional and void for the reason that they deny and deprive minor plaintiffs and the members of the class of persons that they represent their privileges and immunities as citizens of the United States, and the equal protection of laws secured to them by the Constitution and laws of the United States, and rights and privileges secured to them by Section 1983, of Title 42, United States Code;

(c). enter a permanent injunction to enjoin and restrain the defendant Lloyd Funchess, as superintendent of public schools in East Baton

Rouge Parish, Louisiana and the defendant East Baton Rouge Parish School Board, a corporation; and each of them, their agents, servants, employees, their attorneys, and their successors in office, and all other persons in concert or participation with them forever, from executing or enforcing against minor plaintiffs and the members of the class of persons that they represent, any constitutional provision or statute of the State of Louisiana, and particularly Sections 81.1, 331, 332, 333 and 334, Louisiana Revised Statutes, and Article 12, Section 1, of the Constitution of Louisiana, or any rules or regulations of the East Baton Rouge Parish School Board made or issued in reliance thereon, that require, permit or sanction the operation of the public elementary or secondary schools of East Baton Rouge Parish, Louisiana, separately for white and colored children.

4. That this Honorable Court allow plaintiffs their costs incurred herein and grant such other and further relief as may appear just and proper in the premises.

/s/ Alex L. Pitcher, Jr.
Alex L. Pitcher, Jr.
1501 East Boulevard
Baton Rouge, Louisiana

/s/ A. P. Tureaud
A. P. Tureaud
1821 Orleans Avenue
New Orleans, Louisiana

/s/ A. H. Trudeau, Jr.
A. H. Trudeau, Jr.
1821 Orleans Avenue
New Orleans, Louisiana

/s/ Robert L. Carter
Robert L. Carter
107 West 43rd Street
New York, New York

/s/ Thurgood Marshall
Thurgood Marshall
107 West 43rd Street
New York, New York

/s/ U. Simpson Tate
U. Simpson Tate
1718 Jackson Street
Dallas, Texas

ATTORNEYS FOR PLAINTIFFS

STATE OF LOUISIANA
PARISH OF ORLEANS

ALEX L. PITCHER, JR. being first duly sworn, deposes and says that he is one of the attorneys for Plaintiffs in the above and foregoing complaint; that he has read the same and that all of the facts and allegations contained therein are true and correct to the best of his information and belief.

/s/ Alex L. Pitcher, Jr.

Sworn to and subscribed before me this 28th day of February, 1956.

/s/ A. P. Tureaud
NOTARY PUBLIC.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
BATON ROUGE DIVISION

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| CLIFFORD EUGENE DAVIS, JR., et al., Plaintiffs, v. EAST BATON ROUGE PARISH SCHOOL BOARD, et al., Defendants. | (Filed Sep. 27, 1962) CIVIL ACTION NO. 1662 |

MOTION TO INTERVENE AS PLAINTIFFS

1. The following intervenors hereby move for leave to intervene as plaintiffs in this action in order to assert claims under the original complaint and the motions heretofore filed by plaintiffs in this case, and as set forth in their intervenors' complaint, a copy of which is hereto attached:

Patricia Jelks, a minor, by Arthur Jelks, her father and next friend;

Olivia Sanderford, Marian Sanderford, Earl Sanderford, Derbert Sanderford and Herbert Sanderford, minors, by O. B. Sanderford, their father and next friend;

Ruth F. Bookman, a minor, by William T. Handy, Jr., her uncle-in-law and next friend.

2. Intervenors are Negro citizens of the United States and the State of Louisiana. Intervenors are Negro children by their parents and next friends, attending public schools operated by the East Baton Rouge Parish School Board. Intervenors are members of the class represented by the original plaintiffs in this suit and their claims asserted herein and the main action have questions of law and fact in common.

3. Intervenors adopt the allegations and prayers contained in the original complaint, motion for further relief and any other pleadings and motions filed by the original plaintiffs. Intervenors are entitled to the benefits of the order previously entered in this cause.

WHEREFORE, applicants move for leave to intervene herein as plaintiffs in order to protect their rights in the premises and for leave to file the attached intervenors' complaint.

Respectfully submitted,

/s/ A P Tureaud

A. P. Tureaud
1821 Orleans Avenue
New Orleans 16, Louisiana
Johnnie A. Jones
Baton Rouge, La.

Jack Greenberg
Constance Baker Motley
James M. Nabrit, III
Norman Amaker
10 Columbus Circle
New York 19, New York

Attorneys for Plaintiff-Intervenors

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
BATON ROUGE DIVISION

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| CLIFFORD EUGENE DAVIS, JR., et al.,<br>Plaintiffs,<br>v.<br>EAST BATON ROUGE PARISH SCHOOL BOARD, et al.,<br>Defendants,<br>PATRICIA JELKS, a minor, by Arthur Jelks, her father and next friend; OLIVIA SANDERFORD, MARIAN SANDERFORD, EARL SANDERFORD, DERBERT SANDERFORD and HERBERT SANDERFORD, minors, by O. B. SANDERFORD, their father and next friend;<br>RUTH F. BOOKMAN, a minor, by WILLIAM T. HANDY, JR., her uncle-in-law and next friend,<br>Plaintiffs-Intervenors. | CIVIL ACTION<br>No. 1662 |

INTERVENORS' COMPLAINT

Intervenors adopt and reassert the allegations of the complaint herein except: So much of ¶ I(a) as alleges that this action arises under 28 U.S.C. §1331; so much of ¶ II as invokes jurisdiction under 28 U.S.C. §§2281, 2284 for

the purpose of convening a three-judge court; ¶ IIIc, ¶ IV(9), (10), (12), (13) and so much of ¶ IV(14) as contain allegations respecting the unconstitutionality of certain specified Louisiana statutes and a section of the Louisiana Constitution which have previously been declared unconstitutional; and ¶ V(1), (3)(b) of the prayer which asks for the convening of a three-judge court and a declaration of the unconstitutionality of the statutes and constitutional provision referred to above. Reference in the complaint to the infant plaintiffs includes the infant intervenors, reference to the adult plaintiffs includes the adult intervenor and reference to plaintiffs without specification includes all intervenors.

II

The infant intervenors are citizens of the United States and the State of Louisiana and are Negro school children attending public schools operated by the defendant East Baton Rouge Parish School Board. The adult intervenors are citizens of the United States and the State of Louisiana and the parents or guardians of the infant intervenors. All of the intervenors are members of the class represented by the original plaintiffs in this cause and they are entitled to the benefits of the Court's order in this cause.

III

On May 25, 1960, this Court enjoined the defendants from requiring segregation of the races in the East Baton Rouge Parish public schools from and after such time as was necessary to arrange for admission of the plaintiffs

and members of their class to the schools on a racially nondiscriminatory basis with all deliberate speed. Said order of injunction was affirmed by the Fifth Circuit Court of Appeals on February 9, 1961 and on October 9, 1961 the United States Supreme Court denied certiorari. Defendants have not taken any steps to desegregate the public schools or to comply with the Court's order.

IV

The East Baton Rouge Parish School Board follows a policy, practice, custom and usage of assigning children to public schools on a racially segregated basis and maintains and enforces a dual system of attendance districts based upon race. Said policy, practice, custom and usage deprives plaintiff-intervenors of rights protected by the Fourteenth Amendment to the Constitution of the United States and the previous order of this Court.

V

1. In August, 1962, plaintiff-intervenor Jelks orally requested defendant school board to admit his minor child, one of the infant intervenors, to the Baton Rouge Junior High School, an all-white public school operated and maintained by defendant school board in the City of Baton Rouge, for the 1962-1963 school term. Plaintiff-intervenor Jelks was informed by an official of defendant school board that because of her race his child had been automatically assigned to Capitol Junior High School, an all-Negro public school operated and maintained by defendant school board in the City of Baton Rouge.

On or about August 11, 1962, intervenor Jelks made written application to defendant school board for transfer of his child out of the attendance area of Capitol Junior High School and for admission of his child to the Baton Rouge Junior High School. Said request was denied by a letter from an official of the school board which stated that the request had been denied under existing school board policy.

2. On or about August 31, 1962, intervenor Jelks accompanied his child, one of the infant intervenors, to the Baton Rouge Junior High School and sought to enroll her in the school. His attempt to enroll the infant-intervenor was unsuccessful because of the policy and practice of defendant in discriminating in the admission of school children to the public schools of Baton Rouge on the ground of race.

VI

On or about September 4, 1962, plaintiffs-intervenors, Patricia Jelks, Olivia Sanderford and Ruth Bookman accompanied by plaintiff-intervenor, Arthur Jelks, personally appeared at the Baton Rouge Junior High School and sought enrollment. They were informed by the principal of the school that they could not be enrolled, and consequently were denied admittance. Said denial of admittance was on account of the race and color of plaintiffs-intervenors.

VII

Plaintiffs-intervenors allege that the above acts of defendant school board acting through its agents were in implementation of its policy and practice of segregating public school children on the grounds of race in admission to and attendance at the public schools of Baton Rouge. This policy and practice constitute racial discrimination against intervenors and members of the class represented by them and as such violate their rights to equal protection of the laws and due process of law guaranteed by the Fourteenth Amendment to the Constitution of the United States and violate the order of this Court in this case.

VIII

No reasonable or adequate administrative remedies are available to intervenors to secure them relief from the complained of discrimination. Hence attempted resort to such remedies, if any, would be futile and unavailing.

IX

Unless intervenors are afforded the relief sought herein, the defendants will continue the discriminatory policies, practices and procedures mentioned above and will continue to maintain segregation in the public schools of East Baton Rouge. Plaintiffs are threatened with irreparable injury by reason of the policies, practices and procedures complained of herein and have no adequate remedy at law to obtain relief therefrom.

WHEREFORE, plaintiffs-intervenors respectfully pray that the Court:

1. Allow this complaint to be filed and hear and determine the request for preliminary and/or final injunctive relief together with the now pending motion for further relief, which involves the same issues of law and fact.

2. Enter a preliminary and/or final injunction restraining the defendants, their agents, servants, and employees from refusing to admit, enroll, and educate the plaintiffs-intervenors and others similarly situated to schools on a nonracial basis, and without racial discrimination and requiring defendants to submit a plan within a set period of time to be determined by this Court for the reorganization of the entire school system of the Parish of East Baton Rouge into a unitary nonracial system which shall include a plan for the assignment of children on a nonracial basis; the drawing of school zone attendance lines on a nonracial basis; the allotment of funds; the construction of schools; the approval of budgets on a nonracial basis; the assignment of teachers on a nonracial basis and the elimination of any other discrimination in the operation of the school system or in the school curricula which are based solely upon race and color.

3. That the Court grant such other and further relief as may seem just and proper.

Respectfully submitted,

/s/ A P Turead
A. P. Turead
1821 Orleans Avenue
New Orleans, Louisiana
Johnnie A. Jones
Baton Rouge, La.

/s/ _____
Jack Greenberg
Constance Baker Motley
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10 Columbus Circle
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Attorneys for Plaintiffs-Intervenors

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
BATON ROUGE DIVISION

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| CLIFFORD EUGENE DAVIS, et al., Plaintiffs, v. EAST BATON ROUGE PARISH SCHOOL BOARD, et al., Defendants, PATRICIA JELKS, a minor, by Arthur Jelks, her father and next friend, et al., Plaintiffs-Intervenors. | CIVIL ACTION NO. 1662 |

ORDER PERMITTING INTERVENTION AS PLAINTIFFS

(Filed Sep. 27, 1962)

Patricia Jelks, a minor, by Arthur Jelks, her father and next friend; Olivia Sanderford, Marian Sanderford, Earl Sanderford, Derbert Sanderford and Herbert Sanderford, minors, by O. B. Sanderford, their father and next friend and Ruth F. Bookman, a minor, by William T. Handy, Jr., her uncle-in-law and next friend, having moved through their attorneys for leave to intervene as parties plaintiff in this cause pursuant to Rule 24(b)(2), F.R.C.P., in order to assert claims under the complaint and all motions heretofore filed, particularly the motion for further relief, and

in order to assert claims as set forth in the Intervenors' complaint tendered with the Motion to Intervene as Plaintiffs,

IT IS HEREBY ORDERED that Patricia Jelks, a minor, by Arthur Jelks, her father and next friend; Olivia Sanderford, Marian Sanderford, Earl Sanderford, Derbert Sanderford and Herbert Sanderford, minors, by O. B. Sanderford, their father and next friend and Ruth F. Bookman, a minor, by William T. Handy, Jr., her uncle-in-law and next friend, are granted leave to intervene as plaintiffs in this cause and to file the intervenors' complaint and shall be considered in all respects as if they were original parties to this cause.

/s/ E. Gordon West
United States District Judge

Dated: Sept. 27, 1962.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
BATON ROUGE DIVISION

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| CLIFFORD EUGENE DAVIS, JR. et al., Plaintiffs, vs. EAST BATON ROUGE PARISH SCHOOL BOARD, et al., Defendants, | CIVIL ACTION NO. 1662 |

MOTION TO RECALL ORDER ALLOWING CERTAIN PARTIES TO INTERVENE

Now into Court come the defendants, the East Baton Rouge Parish School Board, Lloyd L. Lindsey, Superintendent of said Board, Sargent Pitcher, Jr., District Attorney of East Baton Rouge Parish, Bryan Clemmons, Sheriff of East Baton Rouge Parish, John Christian, Mayor of the City of Baton Rouge and Wingate White, Chief of Police of the City of Baton Rouge, by their attorneys and file objections to Patricia Jelks, a minor, by Arthur Jelks, her father and next friend; Olivia Sanderford, Marian Sanderford, Earl Sanderford and Herbert Sanderford, minors, by O. B. Sanderford, their father and next friend; Ruth F. Bookman, a minor, by William I. Handy, Jr., her uncle-in-law and next friend, being allowed to intervene in this cause as parties-plaintiff, which objections are as follows:

1. There has not been proper service and notice of the motion to intervene on any of your defendants.

2. The order granting permission to intervene should not have been issued ex parte, without a hearing, and without opportunity for opposition by defendants.

3. As admitted by intervenors in their motion to intervene, they are members of the class represented by the original plaintiffs in this suit and will receive the benefit of any orders or judgment already rendered or to be rendered in this cause and they made no claim that they are inadequately represented, all of which renders their intervention completely superfluous and unnecessary.

4. The motion to intervene is not timely filed as final judgment has already been rendered and all appeals are final.

WHEREFORE, defendants move the Court to recall and strike the order permitting the named parties to intervene and to now deny the motion to intervene.

And now, moving in the alternative, and only in the event the Court refuses to deny the motion to intervene, defendants move the Court to recall the order granting the above named parties permission to intervene herein and to set a date, at the convenience of the Court, on which date defendants may be heard in opposition to the motion to intervene.

Defendants further pray that no action be taken on intervenor's complaint, and that defendants be relieved of filing any responsive pleadings to said complaint, until after the above mentioned hearing has been held on

whether or not said parties shall be permitted to intervene.

Respectfully submitted,

/s/ Sargent Pitcher, Jr.
SARGENT PITCHER, JR.
District Attorney
19th Judicial District

/s/ John F. Ward, Jr.
JOHN F. WARD, JR.
Assistant District Attorney
19th Judicial District

Attorneys for defendants.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
BATON ROUGE DIVISION

CLIFFORD EUGENE DAVIS,
ET AL.

Plaintiffs,

VERSUS NO. 1662 – CIVIL ACTION

EAST BATON ROUGE PARISH
SCHOOL BOARD, ET AL
Defendants

ORDER RECALLING AND SETTING ASIDE
ORDER DATED SEPTEMBER 27, 1962
GRANTING CERTAIN PARTIES PERMISSION
TO INTERVENE AS PLAINTIFFS

Defendants, the East Baton Rouge Parish School Board, Lloyd L. Lindsey, Superintendent of said Board, Sargent Pitcher, Jr., District Attorney of East Baton Rouge Parish, Bryan Clemmons, Sheriff of East Baton Rouge Parish, John Christian, Mayor of the City of Baton Rouge and Wingate White, Chief of Police of the City of Baton Rouge, having moved through their attorneys for the Court to recall and set aside its previous ex parte order granting permission to Patricia Jelks, a minor, by Arthur Jelks, her father and next friend; Olivia Sanderford, Marian Sanderford, Earl Sanderford, Derbert Sanderford, and Herbert Sanderford, minors, by O. B. Sanderford, their father and next friend; and Ruth F. Bookman, a minor, by William T. Handy, Jr., her uncle-in-law and next friend, to intervene as plaintiffs in this matter until they, movers herein, have had an opportunity to be heard, and, it

appearing to the Court that substantial justice can be done herein only by granting such a requested hearing:

IT IS ORDERED that the previous ex parte order of this Court dated September 27, 1962, permitting Patricia Jelks, a minor, by Arthur Jelks, her father and next friend; Olivia Sanderford, Marian Sanderford, Earl Sanderford, Derbert Sanderford, and Herbert Sanderford, minors, by O. B. Sanderford, their father and next friend; and Ruth F. Bookman, a minor, by William T. Handy, Jr., her uncle-in-law and next friend, to intervene as plaintiffs in this cause, be, and it is hereby recalled and set aside as though never issued until this matter is heard by the Court contradictorily between all parties hereto.

IT IS FURTHER ORDERED that defendants are relieved of the responsibility of filing responsive pleadings to intervenors' complaint until final determination of this pending motion by the Court.

IT IS FURTHER ORDERED that this motion to intervene be, and it is hereby set for hearing at Baton Rouge, Louisiana, on Friday, November 2, 1962, at 10:00 o'clock a. m., and that all counsel of record be so notified.

Baton Rouge, Louisiana, October 3, 1962.

/s/ E. Gordon West
E. Gordon West
United States District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
BATON ROUGE DIVISION

MINUTE ENTRY:
November 2, 1962
WEST, J.

CLIFFORD EUGENE DAVIS, ET AL.

VS

EAST BATON ROUGE
PARISH SCHOOL BOARD, ET AL

CIVIL ACTION
NO. 1662

---

This cause came on for hearing this day on motion of certain parties to intervene as plaintiffs.

PRESENT: A. P. Tureaud, Esq.
Johnnie A. Jones, Esq.
Attorneys for plaintiffs

John F. Ward, Jr., Esq.
Assistant District Attorney,
Parish of East Baton Rouge
Scallan Walsh, Esq.
Assistant Attorney-General,
State of Louisiana
Attorneys for defendants

Argument.

IT IS ORDERED that the motion of certain parties to intervene as plaintiffs in this matter be, and the same is hereby, DENIED.

---

A. P. Tureaud, Esq.
Johnnie A. Jones, Esq.
Jack Greenberg, Esq.

John F. Ward, Jr., Esq.
Jack P. F. Gremillion, Esq.
Scallan Walsh, Esq.

IN THE

UNITED STATES DISTRICT COURT

FOR THE

MIDDLE DISTRICT OF LOUISIANA

CLIFFORD EUGENE DAVIS, JR., ET AL.

versus

EAST BATON ROUGE PARISH SCHOOL BOARD, ET AL.

CIVIL ACTION NUMBER: 1662-A

**********

MOTION FOR ATTORNEY'S FEES

(Filed April 30, 1996)

NOW INTO COURT, in proper person, comes JOHNNIE A. JONES, an attorney for plaintiff's in the above-captioned action, and moves this Honorable Court to order the defendant, EAST BATON ROUGE PARISH SCHOOL BOARD, to pay unto him attorney's fees at the rate of $250.00 per hour for 4,911.5 hours accumulated by him in this 40 year-old ongoing litigation; and additionally for lodestar amount, all in accordance with the Civil Rights Attorney Fees Awards Act of 1976, 42 U.S.C. § 1988.

**WHEREFORE,** movant, JOHNNIE A. JONES, prays that this, his "Motion for Attorney's Fees" be maintained, and that, in due course the defendant, EAST BATON ROUGE PARISH SCHOOL BOARD, be ordered to pay unto movant, JOHNNIE A. JONES, attorney's fees in accordance with the tenor as herein above set forth and in

accordance with the Civil Rights Attorney Fees Awards Act of 1976, 42 U.S.C. § 1988.

Respectfully submitted,

JOHNNIE A. JONES,
MOVANT IN PROPER PERSON:

DATED: April 30, 1996

/s/ Johnnie A. Jones
JOHNNIE A JONES (BAR No. 8329)
JONES & JONES ATTORNEYS AT LAW
STATE NATIONAL LIFE BUILDING
263 THIRD STREET SUITE 702
BATON ROUGE, LOUISIANA 70801-1703
TELEPHONE: 504/383-8573
teleFAX: 504/383-1276

**CERTIFICATE OF SERVICE**

I, JOHNNIE A. JONES, movant in the above and foregoing captioned motion, hereby certify that a copy of the above and foregoing captioned motion, together with its companion filing, is being forwarded to the opposing counsel of record by regular United States mail, first-class postage prepaid, addressed to:

ROBERT L. HAMMONDS ESQ.
1111 SOUTH FOSTER DRIVE SUITE C
POST OFFICE BOX 65236
BATON ROUGE, LOUISIANA 70896-5236
TELEPHONE: 504/923-3462
teleFAX: 504/923-0315

CHARLES L. PATIN ESQ.
C/O EAST BATON ROUGE PARISH SCHOOL BOARD
1050 SOUTH FOSTER DRIVE
BATON ROUGE, LOUISIANA 70806
TELEPHONE: 504/922-5400

Baton Rouge, Louisiana, this 30 day of April, 1996.

/s/ Johnnie A. Jones
JOHNNIE A JONES (BAR No. 8329)
JONES & JONES ATTORNEYS AT LAW
STATE NATIONAL LIFE BUILDING
263 THIRD STREET SUITE 702
BATON ROUGE, LOUISIANA 70801-1703
TELEPHONE: 504/383-8573
teleFAX: 504/383-1276

IN THE

UNITED STATES DISTRICT COURT

FOR THE

MIDDLE DISTRICT OF LOUISIANA

CLIFFORD EUGENE DAVIS, JR., ET AL.

versus

EAST BATON ROUGE PARISH SCHOOL BOARD, ET AL.

CIVIL ACTION NUMBER: 1662-A

**********

AFFIDAVIT OF ATTORNEY IN SUPPORT OF 'MOTION FOR ATTORNEY'S FEES'

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

BEFORE ME, the undersigned authority, an Attorney/Notary Public, duly commissioned and qualified, in and for the Parish of East Baton Rouge, Louisiana; and the State of Louisiana,

PERSONALLY CAME AND APPEARED:

JOHNNIE A. JONES

who, upon oath did depose and say:

That since admission to practice law in the State of Louisiana on June 11, 1953, and the practicing of law before this Court since October of 1953, he has been continuously engaged in the practice of Civil Rights litigation in this district; that he is admitted to practice law in the United States Court of Appeal, Fifth Circuit, and the Supreme Court of the United States. Considering his

experience and the degree of expertise in handling and devotion to the prosecution of Civil Rights litigation he is entitled to the current rate of $250.00 per hour which is fair and reasonable for him who has been enrolled as the attorney of record in this case since September 27, 1962. This case, the above-captioned action, was originally filed herein on February 29, 1956.

At the time the above-captioned action was initially filed herein or at the time that movant, JOHNNIE A. JONES, was enrolled as the attorney of record in the above-captioned action there was no requirement for him or any attorney to prepare and keep an accurate record of the time spent in preparation and appearances, etc. in connection with his performance in the case in order to substantiate an attorney's fee award. However, upon the enactment of 'The Civil Rights Attorney's Fee Award Act of 1976,' 42 U.S.C. § 1988, which entitled movant to attorney's fees. retroactively.

Movant, JOHNNIE A. JONES, has spent approximately 135 hours to reconstruct the record so as to designate the time spent indicative of his preparation in the above-captioned litigation resulting in the plaintiffs prevailing as what is significantly designated as the prevailing parties within the definition of The Civil Rights Attorney's Fee Award Act of 1976, 42 U.S.C. § 1988.

The time movant spent on the case from the time of his enrollment as an attorney of record, from reconstruction of the record, is specified in the chronological schedule of hours below:

| ATTORNEY'S TIME: | | HOURS: |
|---|---|---|
| September 27, 1962<br>Motion to Intervene as Plaintiff's and Intervenor's Complaint and Companioned Order, and Memorandum, and Motion for Preliminary Injunction | ---------- | 32.5 |
| October 3, 1962<br>Defendant's Motion to Recall Order Allowing Certain Parties to Intervene with Companioned Order Recalling and Setting Aside the Order of September 27, 1962, Granting Certain Parties to Intervene as Plaintiffs | ---------- | 26 |
| November 2, 1962<br>Hearing on Motion to Intervene Certain Parties as Plaintiffs | ---------- | 10.5 |
| February 11, 1963<br>Plaintiff's Reviewed Motion for Further Relief with Companioned Memorandum Order and Notice of Motion | ---------- | 44.5 |
| February 27, 1963<br>Plaintiff's Request for Subpoena | ---------- | .5 |

March 1, 1963
Hearing Plaintiff's Reviewed
Motion for Further Relief ---------- 13.5

March 1, 1963
Review Memorandum Decision ---------- 2.5

March 5, 1963
Plaintiff's Proposed Plan of
Desegregation ---------- 56.5

March 5, 1963
Conference in Chambers
pursuant to Prior Notice ---------- 63

June 28, 1963
Reviewed Defendant's Motion
for Approval of Plan for
Orderly Admission of Children
to Schools on a Racially Non-
Discriminatory Basis ---------- 85.5

July 8, 1963
Plaintiff's Objections to
Defendant's Plan and
Opposition to Defendant's
Motion for Approval of Plan
with Combined Order ---------- 94

July 8, 1963
Interrogatories by Plaintiff to
Defendant, East Baton Rouge
Parish School Board ---------- 24.5

July 8, 1963
Plaintiff's Motion to Shorten
Time for Answering
Interrogatories with Combined
Order ---------- 10

| | | |
|---|---|---|
| July 10, 1963<br>Defendant's Objection to Decreasing Time within which to Answer Proposed Interrogatories and Request for and Extension of Time in which to Answer said Interrogatories with Combined Order | ---------- | .5 |
| July 17, 1963<br>Reviewed the Memorandum Decision | ---------- | 170.5 |
| July 18, 1963<br>Reviewed Order on Plan for Segregation | ---------- | 40 |
| April 19, 1965<br>Plaintiff's Motion for Further Relief with Companioned Memorandum of Authorities | ---------- | 51.5 |
| April 19, 1965<br>Plaintiff's Motion to Add Additional Parties Defendant | ---------- | 5 |
| May 11, 1965<br>Plaintiff's Notice to Take the Deposition of Robert J. Arthur, Superintendent of East Baton Rouge Parish School Board and Certificate of Service | ---------- | 13.5 |
| May 21, 1965<br>Taking of the Deposition of Robert J. Arthur | ---------- | 96.5 |

| | | |
|---|---|---|
| May 25, 1965<br>Review and Examination of Deposition of Robert Arthur taken May 21, 1965 and Attached Exhibits | ---------- | 129.5 |
| June 2, 1965<br>Reviewed Opposition to Motion To Add Party Defendant and Alternative Motion to Dismiss for Failure to State a Claim with Companioned Memorandum | ---------- | 41 |
| June 2, 1965<br>Reviewed Motion to Dismiss Improper Party Defendant | ---------- | .5 |
| June 2, 1965<br>Reviewed Motion to Dismiss and Deny Plaintiff's Motion for Further Relief | ---------- | .5 |
| June 2, 1965<br>Hearing on Order to Show Cause Why the Baton Rouge Citizen Council, Inc., should not be made party Defendant, and on Plaintiff's Motion for Further Relief | ---------- | 53 |
| July 9, 1965<br>Reviewed Motion Submitting Administrative Plan in Accordance with Court Instruction for June 2, 1965 | ---------- | 88.5 |
| July 15, 1965<br>Reviewed Order | ---------- | 3.5 |

| | | |
|---|---|---|
| August 9, 1965<br>Plaintiff's Notice of Appeal with Companioned Bond | ---------- | 1.5 |
| September 17, 1965<br>Reviewed Transcript of Testimony and Proceedings heard in Court on June 2, 1965 | ---------- | 8.5 |
| 1966<br>Preparation of Brief and Reviewing of Briefs and other Appellate filings, motions, and pleadings | ---------- | 460 |
| March 29, 1967<br>Review of the Opinion of the Court of Appeals, Fifth Circuit | ---------- | 25 |
| April 28, 1967<br>Plaintiff's Motion for Entry of Decree in Accordance with Mandate | ---------- | .5 |
| May 1, 1967<br>Defendant's Opposition to Motion for Entry of Decree and Request for A Hearing Thereon | ---------- | 41.5 |
| May 8, 1967<br>Reviewed the Opinion of the District Court | ---------- | 119 |
| June 26, 1967<br>Reviewed and Examined the Defendants' Submission of Report in Accordance | ---------- | 16.5 |

| | | |
|---|---|---|
| October 2, 1967<br>Review and Examination of the Defendants Submission of Reports in Accordance with Sections VI(a) and IX(2) of the Decree entered May 8, 1967 | ---------- | 121 |
| October 10, 1968<br>Review of School System Report | ---------- | 79.5 |
| June 19, 1968<br>Reviewed Defendant's Submission Report in Accordance with Section IX(1) of Decree entered May 8, 1967 | ---------- | 31.5 |
| December 5, 1969<br>Reviewed Motion to Add Additional and Intervening Plaintiffs and Attorneys for Immediate Relief | ---------- | 4 |
| December 19, 1969<br>Hearing on Motion to Add Additional and Intervening Plaintiffs and Attorneys for Immediate Relief | ---------- | 8.5 |
| December 19, 1969<br>Plaintiff's Motion for Further and Immediate Relief | ---------- | 2.5 |
| January 13, 1970<br>Reviewed Defendant's Opposition to Plaintiff's and Intervenor's Motion for Further Relief | ---------- | 25.5 |

| | | |
|---|---|---|
| January 16, 1970<br>Hearing on Plaintiff's Motion for Further and Immediate Relief | ---------- | 11.5 |
| June 24, 1970<br>Review and Examination of Defendants Motion Presenting Plan for a Unitary School System and Exhibits attached | ---------- | 119 |
| July 23, 1970<br>Memorandum Opinion and Order – Re: Desegregation Plan for East Baton Rouge Parish Public School | ---------- | 157.5 |
| April 2, 1971<br>Motion for Further Relief with Notice | ---------- | 1 |
| April 2, 1971<br>Motion and Memo for Further Relief Hearing on May 21, 1971 | ---------- | 27.5 |
| July 25, 1972<br>Stipulation Between Counsel for Plaintiffs and Defendants | ---------- | .5 |
| May 22, 1974<br>Joint Motion to Associate Counsel of Record, with Combined Order | ---------- | 1 |
| June 7, 1974<br>Motion for Further Relief with Combined Order | ---------- | 1 |
| June 10, 1974<br>Request for Admission of Fact | ---------- | 1.5 |

| | | |
|---|---|---|
| July 31, 1974<br>Review and Examination of Defendant's Answers to Interrogatories and Request for admissions propounded by Intervenors | ---------- | 200 |
| August 1, 1974<br>Reviewed Defendant's Motion to Upset Hearing on Intervenor's Motion for Further Relief and Refer such Motion to the Biracial Authorities in Support Thereof | ---------- | 13 |
| August 2, 1974<br>Reviewed Defendant's Answer to Opposition to Intervenor's Motion for Further Relief | ---------- | .5 |
| August 17, 1974<br>Reviewed the Order of August 2, 1974 | ---------- | .5 |
| September 28, 1974<br>Reviewed the Order of September 23, 1974 | ---------- | .5 |
| January 17, 1975<br>Reviewed the Report of the Court Appointed Expert and Discussed with Attorney for Intervenor the contents of that Report | ---------- | 174 |

| | | |
|---|---|---|
| May 14, 1975<br>Reviewed and Examination of the Final Report submitted the Court-Appointed Expert, Louisiana Education Laboratory (LEL) | ---------- | 32 |
| June 25, 1975<br>Review Transcript of Hearing of June 18, 1975 and Discussed with Counsel for Intervenor's | ---------- | 52.5 |
| June 30, 1978<br>Reviewed the Opinion of the Court of Appeals April 7, 1978 | ---------- | 37.5 |
| August 22, 1979<br>Reviewed Defendant's Motion for Extension of Time within which to Comply with Order of July 18, 1979 | ---------- | 1 |
| December 3, 1979<br>Reviewed Minute Entry and Order of November 28, 1979 | ---------- | 1 |
| December 27, 1979<br>Reviewed Minute Entry and Order of December 20, 1979 | ---------- | 1 |
| January 14, 1980<br>Reviewed Minute Entry and Order of January 11, 1980 | ---------- | 1 |
| February 4, 1980<br>Reviewed Minute Entry and Order of January 31, 1980 | ---------- | .5 |
| March 13, 1980<br>Reviewed Minute Entry and Order of March 11, 1980 | ---------- | .5 |

| | | |
|---|---|---|
| April 13-15, 1981<br>Research for Motion | ---------- | 18 |
| April 16, 1981<br>Motion for Attorney's Fees<br>with Memo and Notice | ---------- | 51.5 |
| April 22, 1981<br>Affidavit Forming Basis of<br>Motion for Attorney's Fees<br>Submitted By and On Behalf of<br>Johnnie A. Jones, Attorney for<br>Plaintiffs | ---------- | 52.5 |
| May 1, 1981<br>Minute Entry Order Denying<br>Jones' Attorney's Fees, Copies<br>to Attorneys | ---------- | 8 |
| May 19, 1981<br>Notice of Appeal | ---------- | .5 |
| May 28, 1981<br>Designation of Contents of<br>Record and Statement of Issues<br>on Appeal | ---------- | 11.5 |
| May-June 1981<br>Reconstruction of Record | ---------- | 135 |
| June 8, 1981<br>Order of District Court<br>pursuant to FRAP, Rule 11(e)<br>to hold record in possession<br>and not to lodge in CA5, on<br>Jones' Motion of Appeal | ---------- | .5 |

| | | |
|---|---|---|
| April 22, 1996<br>Preparation of these filings for Attorney's Fees, Motion, Affidavit, Memorandum, Notice of Motion, and Suggestive Order | ---------- | 35 |
| September 27, 1962 to 1972<br>Hours of Accompaniment (Estimated) | ---------- | 1,600 |
| TOTAL HOURS | ---------- | 4,851 |

I, JOHNNIE A. JONES, the movant herein honestly believe that I am entitled to attorney's fees at the rate of $250.00 per hour in this more than 40 year-old ongoing litigation, which is a reasonable rate for attorney's fees of my experience in this region for contingent Civil Right litigation such as that in the above-captioned action.

I, JOHNNIE A. JONES, have received no compensation from either party in the above-captioned action; and to my knowledge no attorney of record for the plaintiffs during the 40 years of litigation have received any compensation in payment as attorney's fees.

/s/ Johnnie A. Jones
JOHNNIE A. JONES

SWORN TO AND SUBSCRIBED, before me, at Baton Rouge, Louisiana, this 30 day of April, 1996.

/s/ James C. Ferguson
JAMES C. FERGUSON
ATTORNEY/NOTARY PUBLIC

Supreme Court, U.S.
FILED
JAN 12 1998
CLERK

No. 97-974

In The

# Supreme Court of the United States

October Term, 1997

CLIFFORD EUGENE DAVIS, JR., ET AL., and JOHNNIE A. JONES, Attorney,

*Petitioner,*

versus

EAST BATON ROUGE PARISH SCHOOL BOARD, ET AL.,

*Respondent.*

**On Petition For Writ Of Certiorari To The United States Court Of Appeal For The Fifth Circuit**

## BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

*Attorneys for Respondent:*

CHARLES L. PATIN, JR.
*Counsel of Record*
KEAN, MILLER, HAWTHORNE, D'ARMOND, McCOWAN & JARMAN, L.L.P.
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## QUESTIONS PRESENTED

1. Whether the law of the case doctrine is applicable and bars relitigation of Petitioner's claim for attorney's fees for services allegedly rendered during the time period commencing on September 27, 1962 and ending on April 22, 1981?

2. Whether Petitioner's remaining claims for attorney's fees for work in pursuit of his claims for fees during the time periods commencing on May 1, 1981 and ending on April 22, 1996 were properly denied?

## LIST OF PARTIES

The following persons were parties to the proceedings in the Court of Appeals:

JOHNNIE A. JONES,

Mover/Appellant,

and

EAST BATON ROUGE PARISH SCHOOL BOARD,

Defendant/Appellee.

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*CLIFFORD EUGENE DAVIS, JR., ET AL. vs. EAST BATON ROUGE PARISH SCHOOL BOARD, ET AL.*, No. 81-3287,

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*CLIFFORD EUGENE DAVIS, JR., ET AL. vs. EAST BATON ROUGE PARISH SCHOOL BOARD, ET AL.*, Civil Action No. 56-1662-A,

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United States Court of Appeal for the Fifth Circuit
(Unpublished Opinion on Appeal,
Dated September 10, 1997)

## STATEMENT OF THE CASE

The present application for an award of attorney's fees marks the second time Petitioner has filed an application in this civil action.[1] A summary of the prior proceedings and rulings is necessary for an understanding of the matters before this Court.

### A. The April 16, 1981 Application for an Award of Attorney's Fees

Petitioner's first application for an award of attorney's fees was filed on April 16, 1981.[2] An "Affidavit Forming Basis of Motion for Attorney's Fees Submitted By and On Behalf of Johnnie A. Jones, Attorney for Plaintiffs" was filed on April 22, 1981.[3] The application was not filed by any plaintiff in the civil action. It was filed by Petitioner, in proper person, for himself. Neither the application nor the affidavit identified with any specificity the clients Petitioner had represented, or the result he obtained for them.

Petitioner sought attorney's fees in the amount of $350,000.00 for alleged services rendered "over the years". He claimed "more than 2800 hours" of services

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[1] Petitioner omits any discussion of his first application for an award of attorney's fees and the proceedings thereon in the Statement of the Case in the Petition for Writ of Certiorari.

[2] The "Motion for Attorney's Fees" is contained in Appendix "A", App. 1.

[3] The "Affidavit Forming Basis of Motion for Attorney's Fees Submitted By and On Behalf of Johnnie A. Jones, Attorney for Plaintiffs" is contained in Appendix "B", App. 6.

were performed.[4] Petitioner submitted that his hourly rate of compensation was $125.00.[5] No contract for legal services, fee agreement, or other evidence of a client engagement and the terms of compensation was filed in support of the application. Petitioner's papers did not list the dates his services were rendered, the nature of those services, or the time and effort expended to provide them.

The application was denied by the District Court in a minute entry on May 1, 1981.[6] From the adverse ruling, Petitioner perfected an interlocutory appeal to the Court of Appeals. In an unpublished *per curiam* opinion, dated October 24, 1983, the Court of Appeals affirmed the ruling of the District Court.[7]

Petitioner sought rehearing. He urged as follows:

> The case should be remanded to the District Court to permit appellant, JOHNNIE A. JONES, as one of the attorneys for the original plaintiffs and intervenors in this action which commenced February 29, 1956, and still continues, to meet the requirements necessary to establish the detailed list of criteria which must be proved by a party claiming attorney['s] fees; and to list the

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[4] *Id.*

[5] *Id.*

[6] Unpublished Minute Entry, *Clifford Eugene Davis, Jr., et al. v. East Baton Rouge Parish School Board, et al.*, Civil Action No. 1662-A (M.D. La. 5/1/1981), in Appendix "C", App. 9.

[7] Unpublished Opinion on Appeal, *Clifford Eugene Davis, Jr., et al. v. East Baton Rouge Parish School Board, et al.*, No. 81-3287 (5th Cir. 10/24/1983), in Appendix "D", App. 11.

> names of the plaintiffs and intervenors Appellant represented by extracting this information from the voluminous record.[8]

Rehearing was denied on November 21, 1983.[9]

A petition for writ of certiorari was filed in this Court. Certiorari was denied on February 19, 1985.[10]

### B. The Present Application for an Award of Attorney's Fees

The present application and an "Affidavit of Attorney in Support of 'Motion for Attorney's Fees' " were filed on April 30, 1996, some 15 years after Petitioner s first application.[11] Once again, the application was made by Petitioner in proper person for himself. Once again, Petitioner failed to identify with any specificity the clients he had represented, or the result he obtained for them.

The application seeks an award of attorney's fees for alleged services and other work spanning three periods of time. Petitioner alleges during the first period of time

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[8] The Petition for Rehearing is contained in Appendix "E", App. 15.

[9] Unpublished Order on Petition for Rehearing, *Davis, supra*, No. 81-3287 (5th Cir. 11/21/1983), in Appendix "F", App. 20.

[10] *Johnnie A. Jones v. East Baton Rouge Parish School Board, et al.*, 469 U.S. 1227, 84 L. Ed. 2d 364, 105 S. Ct. 1224 (1985).

[11] See "Petition for Writ of Certiorari", No. 97-974, United States Supreme Court, October Term 1997, *Clifford Eugene Davis, Jr., et al., and Johnnie A. Jones, Attorney v. East Baton Rouge Parish School Board, et al.*, Appendix, pp. 42-57.

he rendered 4,660.5 hours of services. This time period, which encompasses the period at issue in the first application, covers from September 27, 1962 to April 22, 1981.[12] The second period of time is alleged to consist of 155.5 hours of work. The work was limited to Petitioner's unsuccessful efforts to reverse the District Court's initial ruling denying him an award of attorney's fees. According to the present affidavit, this period of time, which was not involved in the first application, covers from May 1, 1981 to June 8, 1981. The third period of time, comprised of 35 hours, covers Petitioner's preparation of the present application for an award of attorney's fees. According to the affidavit, this work was performed on April 22, 1996, during a 35 hour period of time.

Petitioner suggests his hourly rate for these time periods is $250.00, and demands fees in excess of $1.2 million.[13] Petitioner claims he spent in excess of 24 hours in a single day on over 30 different days during the three periods of time listed in the affidavit.[14]

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[12] Petitioner's present affidavit offers no explanation as to why the number of hours for this period increased almost twofold from 2,800, in the 1981 application, to in excess of 4,600 hours in the present application.

Moreover, in 1983 the Court of Appeals, in its initial opinion on appeal involving Petitioner's prior application, noted that "[t]he last reference to appellant appearing as a representative of one of the parties in the case is in 1974." See Appendix "D".

[13] This hourly rate of compensation is double the hourly rate stated in the first affidavit. The amount of the fees is over three times the amount sought in 1981.

[14] For example, Petitioner claims he worked for 44.5 hours on February 11, 1963 in connection with review of a "Motion for Further Relief with Companioned Memorandum Order and

### C. Rulings of the Lower Courts on the Present Application

The District Court denied the application for an award of attorney's fees.[15] It addressed Petitioner's claims for each of the three periods of time listed in the affidavit. The District Court relied on the principle of *res judicata* in denying the claim for services covering the period from September 27, 1962 to April 22, 1981. In regard to the remaining claims, the District Court observed as follows:

> The request for fees connected with the 1981 appeal is clearly unwarranted in view of the fact that the Fifth Circuit found his prior submission to be 'totally inadequate'. Consequently, the request for fees connected with the present motion is likewise unfounded.

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Notice of Motion"; 85.5 hours are listed for June 28, 1963 for review of "Defendant's Motion for Approval of Plan for Orderly Admission of Children to Schools on a Racially Non-Discriminatory Basis"; 170.5 hours are shown for July 17, 1963 for review of "the Memorandum Decision"; 129.5 hours are claimed for services on May 25, 1965 for a "Review and Examination of Deposition of Robert Arthur taken on May 21, 1965 and Attached Exhibits"; a single entry for 460 hours is shown for the entirety of the year 1966; 119 hours are listed for a May 8, 1967 review of an opinion of the District Court; 200 hours are shown on July 31, 1974 for "Review and Examination of Defendant's Answers to Interrogatories and Request for admissions propounded by Intervenors".

[15] Unpublished "Ruling on Motions", *Clifford Eugene Davis, Jr., et al. v. East Baton Rouge Parish School Board, et al.*, Civil Action No. 56-1662-A (M.D. La. 9/18/1996), in Appendix "G", App. 22.

The Court of Appeals affirmed.[16] It upheld the District Court's ruling addressing the claim for fees between 1962 and 1981, agreeing that these claims could not be relitigated. However, its reasoning differed from that of the District Court. The Court of Appeals opined that the claim was barred under the doctrine of the law of the case.[17] None of the recognized exceptions to the doctrine were found to be present. The Court of Appeals noted in this regard, and in respect to the remainder of the District Court's ruling, as follows:

> While, unlike the first fee request, Jones breaks down his work into various dated entries in an affidavit, those entries are implausible on their face. Many of the entries indicate that Jones worked more than 24 hours in a single day. . . . Further, the only work Jones claims to have done after April 16, 1981, the date of his first fee motion, involved his unsuccessful quest for attorney's fees. Accordingly, we follow our prior decision.

## SUMMARY OF THE ARGUMENT

1. There exists no reason to reopen issues decided in connection with Petitioner's first application for an award of attorney's fees. The prior Court of Appeals' ruling was not clearly erroneous and does not work a

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[16] Unpublished Opinion on Appeal, *Clifford Eugene Davis, Jr., et al. v. East Baton Rouge Parish School Board, et al.*, No. 96-31074 (5th Cir. 9/10/1997), in Appendix "H", App. 29.

[17] Petitioner incorrectly implies the ruling of the Court of Appeals was based on the principle of *res judicata*.

manifest injustice. No interim change in the law has occurred. No plausible new issues are presented by Petitioner in the application.

2. There exists no basis in law entitling Petitioner to an award of attorney's fees for work done in connection with a failed attempt to prosecute the prior appeal or the present attempt to relitigate his claim.

## ARGUMENT ON THE ISSUES

### 1. THE LAW OF THE CASE DOCTRINE BARS RELITIGATION OF PETITIONER'S CLAIM FOR LEGAL SERVICES[18]

The Court of Appeals correctly applied the law of the case doctrine in the present matter. Petitioner's writ application should be denied.

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[18] Respondent does not suggest that the doctrine of law of the case bars this Court's jurisdiction. (See *Christianson v. Colt Industries Operating Corp.*, 486 U.S. 800, 817, 100 L. Ed. 2d 811, 831, 108 S. Ct. 2166 (1988).) It is not suggested that this Court's prior denial of the former writ application speaks to the merits of Petitioner's claims. (See *Missouri v. Jenkins*, 515 U.S. ___, 132 L. Ed. 2d 63, 115 S. Ct. 2038 (1995).) We are mindful that the doctrine differs from the principle of *res judicata*. (See *Southern Railway Co. v. Clift*, 260 U.S. 316, 319, 67 L. Ed. 283, 284, 43 S. Ct. 126 (1912) (observing that the doctrine of law of the case directs a court's discretion, while *res judicata* supercedes a court's discretion and compels judgment).) Respondent also is aware that the utility of the doctrine has been questioned where "ordinary litigation" is not involved. (See *Arizona v. California*, 460 U.S. 605, n. 8, 75 L. Ed. 2d 318, 103 S. Ct. 1382 (1983).)

"Under [the] doctrine, a court should not reopen issues decided in earlier stages of the same litigation."[19] It has been observed that the doctrine will not apply where a court is "convinced that [its prior holding] is clearly erroneous and would work a manifest injustice."[20] A prior holding also will not be followed where a) an interim change in the law occurs,[21] or b) issues not presented or decided in the prior appeal are subsequently raised.[22]

The prior appellate ruling is not erroneous and works no injustice. Little was proper with Petitioner's first application, or the present one. Indeed, both were "totally inadequate" under the decisions of the Circuit.[23] The prior opinion on the issue of Petitioner's right to an award of attorney's fees can cause no manifest injustice to either Petitioner or the plaintiffs in the civil action. Petitioner is not a party.[24]

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[19] *Agostini v. Felton*, 521 U.S. ___, 138 L. Ed. 2d 391, 423, 117 S. Ct. 1997 (1997), citing, *Messenger v. Anderson*, 225 U.S. 436, 444, 56 L. Ed. 1152, 32 S. Ct. 739 (1912).

[20] *Arizona v. California*, 460 U.S. 605, 618-19, 75 L. Ed. 2d 318, 333, 103 S. Ct. 1382 (1983).

[21] *Agostini*, 138 L. Ed. 2d at 423.

[22] See *Conway v. Chemical Leaman Tank Lines, Inc.*, 644 F.2d 1059, 1062 (5th Cir. 1981).

[23] See *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717 (5th Cir. 1974); *Rainey v. Jackson State College*, 551 F.2d 672, 676 (5th Cir. 1977).

[24] 42 U.S.C. § 1988. See *Richards v. Reed*, 611 F.2d 545, 546 (5th Cir. 1980); *Brown v. General Motors Corp., Chevrolet Division*, 722 F.2d 1009, 1011 (2nd Cir. 1983) (generally noting an award of attorney's fees must be sought in the name of the party, not his attorney); *Collins v. Romer*, 962 F.2d 1508, 1516 (10th Cir. 1992)

Of the remaining reasons cited against the application of the doctrine, only the subsequently raised issues exception can be even remotely considered as a possible grounds to justify the granting of the present writ. However, a simple review of the application and affidavit, even if they were otherwise adequate in other respects, demonstrates that no plausible new facts or issues are raised.

In the present application, Petitioner alleges a greater number of hours of services rendered for his "clients". He seeks amounts for work in connection with the prior appellate proceedings on his first application and for preparation of the present application. The affidavit contains a listing of dates, general descriptions of the services purportedly rendered or work done, and time entries for each. However, taken as a whole, these claims are wholly "implausible on their face". The service descriptions and time entries standing alone suggest that only minimal effort could have been made to reconstruct them, or that only a cursory review was made of any contemporaneous records.

At least 34 of the daily entries are in excess of 24 hours. The affidavit shows 2,419.5 hours of services or other work from September 27, 1962 to 1972.[25] Nevertheless, an additional 1,600 hour *in globo* entry is included

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(an award of attorney's "fees shall be made to a party rather than to that party's attorney"); see also *Kay v. Ehrler*, 499 U.S. 432, 437-38, 113 L. Ed. 2d 486, 492-93, 111 S. Ct. 1435 (1991).

[25] This includes 460 hours in a single entry for the entirety of 1966.

for the same period and described as "Hours of Accompaniment (Estimated)". Surely, the subsequently raised issues exception does not envision, and was never intended to allow for relitigation of issues based upon such wholly implausible "new" facts as those asserted by Petitioner in the present affidavit in support of his application.

## 2. PETITIONER'S REMAINING CLAIMS WERE PROPERLY DENIED

The remainder of the Court of Appeals ruling addresses the claims for the two periods from May 1, 1981 to April 22, 1996, inclusive. The rulings are correct.

The claims for these two periods clearly appear limited to Petitioner's unsuccessful efforts to overturn the initial District Court order denying his first application, and the preparation of the present application. None of the entries suggest that fees are sought for any services rendered on behalf of any plaintiff in the civil action, even though Petitioner purports to be the "only remaining active 'Attorney-of-Record' for the original plaintiffs and members of their class".[26] 42 U.S.C. § 1988 does not contemplate that an award of attorney's fees is available

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[26] Petitioner cites a May 25, 1960 judgment as either certifying or recognizing that the civil action was a class action. The May 25, 1960 judgment is contained in Appendix "I", App. 32.

The Court of Appeals observed in the 1983 opinion on appeal that the last reference in the record to Petitioner appearing as a counsel of record was in 1974. See Appendix "D", App. 13.

for a *pro se* attorney's efforts in prosecution of his own claim for an award of attorney's fees.[27]

## CONCLUSION

For all the foregoing reasons the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

*Attorneys for Respondent*
*East Baton Rouge Parish School Board:*

CHARLES L. PATIN, JR. (La. Bar Roll No. 10388)
*Counsel of Record*
KEAN, MILLER, HAWTHORNE, D'ARMOND, MCCOWAN & JARMAN, L.L.P.
22nd Floor, One American Place (70825)
Post Office Box 3513
Baton Rouge, Louisiana 70821
Telephone: (504) 387-0999
Facsimile: (504) 388-9133

[27] See Note 24, *infra*.

**APPENDIX "A"**

IN THE

UNITED STATES DISTRICT COURT

FOR THE

MIDDLE DISTRICT OF LOUISIANA

CLIFFORD EUGENE DAVIS, JR., ET AL.

versus CIVIL ACTION
NUMBER: 1662-a

EAST BATON ROUGE PARISH SCHOOL BOARD, ET AL.

$$$

Three Hundred Fifty Thousand and No/100 Dollars ($350,000.00).

Respectfully submitted,

JOHNNIE A. JONES,
Movant in Proper
Person:

/s/ Johnnie A. Jones
JOHNNIE A. JONES
Jones & Jones
Attorneys at Law
Taylor Building, Suite 215
251 Florida Street
Baton Rouge, Louisiana 70801
Telephone: 504/383-8573

DATED: April 16, 1981

IN THE

UNITED STATES DISTRICT COURT

FOR THE

MIDDLE DISTRICT OF LOUISIANA

CLIFFORD EUGENE DAVIS, JR., ET AL.

versus CIVIL ACTION
NUMBER: 1662-A

EAST BATON ROUGE PARISH SCHOOL BOARD, ET AL.

$$$

the Court may fix a day, date and time to take up the matter.

Very truly yours,

JOHNNIE A. JONES,
Movant to Proper
Person:

/s/ Johnnie A. Jones
JOHNNIE A. JONES
JONES & JONES
Attorneys at Law
Taylor Building, Suite 215
251 Florida Street
Baton Rouge, Louisiana 70801
Telephone: 504/383-8573

DATED: April 16, 1981

---

CERTIFICATE OF SERVICE

The undersigned does hereby certify that on this day and by regular United States Mail a copy of the above and foregoing "Notice of Motion," together with the therein referenced "Motion for Attorney's Fees" and a copy of its companioned "Memorandum of Authority," all as required by Local Rule 5C of this Court, have been served upon the Attorney for the Defendant, East Baton Rouge Parish School Board, addressed as follows:

Mr. John F. Ward
Attorney at Law
Quad One, Suite "C"
1111 South Foster Drive
Baton Rouge, Louisiana 70806

Baton Rouge Louisiana, this 16 April, 1981.

/s/ Johnnie A. Jones
JOHNNIE A. JONES
JONES & JONES
Attorneys at Law
Taylor Building, Suite 215
251 Florida Street
Baton Rouge, Louisiana 70801
Telephone: 504/383-8573

**APPENDIX "B"**

IN THE

UNITED STATES DISTRICT COURT

FOR THE

MIDDLE DISTRICT OF LOUISIANA

CLIFFORD EUGENE DAVIS, JR., ET AL.

versus CIVIL ACTION
NUMBER: 1662-a

EAST BATON ROUGE PARISH SCHOOL BOARD, ET AL.

$$$

(2,800 hours) in working with this case, and parties, students and persons who were and are involved in this case: but, however, he does hereby fix his fee for this long outstanding Civil Rights Action and [C]omplex [L]itigation at One Hundred Twenty-five Dollars per hour for twenty-eight hundred hours ($125.00 X 2800 hours); that, therefore, his fee is in the full and true sum of Three Hundred Fifty Thousand and No/100 Dollars ($350,000.00), which amount the defendants, EAST BATON ROUGE PARISH SCHOOL BOARD, ET AL., owe him under the provisions of "The Civil Rights Attorney's Fees Awards Act of 1976," 42 U.S.C. §1988.

/s/ Johnnie A. Jones
JOHNNIE A. JONES

AND SUBSCRIBED, before me, this 22 day of April, 1981

/s/ Illegible
**Notary Public**

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CERTIFICATE OF SERVICE

The undersigned does hereby certify that on this day and by regular United States Mail a copy of the above and foregoing "Notice of Motion," together with the therein referenced "Motion for Attorney's Fees" and a copy of its companioned "Memorandum of Authority," all as required by Local Rule 5C of this Court, have been

served upon the Attorney for the Defendant, East Baton Rouge Parish School Board, addressed as follows:

Mr. John F. Ward
Attorney at Law
Quad One, Suite "C"
1111 South Foster Drive
Baton Rouge, Louisiana 70806

Baton Rouge Louisiana, this 16 April, 1981.

/s/ Johnnie A. Jones
JOHNNIE A. JONES
JONES & JONES
Attorneys at Law
Taylor Building, Suite 215
251 Florida Street
Baton Rouge, Louisiana 70801
Telephone: 504/383-8573

**APPENDIX "C"**

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

MINUTE ENTRY:
MAY 1, 1981
PARKER, C.J.

CLIFFORD EUGENE DAVIS, JR., ET AL. CIVIL ACTION

VERSUS NUMBER 1662-A

EAST BATON ROUGE PARISH SCHOOL BOARD, ET AL.

* * *

This matter is before the Court on a motion filed by Johnnie A. Jones, Attorney at Law, requesting that the Court fix his attorney's fees at $350,000 and assess them against the defendant School Board under 42 U.S.C. §1988. In support of that motion, mover has filed a generalized declaration that he has been an attorney of record "over the years" and that he has accumulated "more than 2,800 hours" in work on this case and that he desires to be paid at the rate of $125 per hour. Mover does not specify what actual work he has performed or when and has not met any of the other factors which are required to be considered under *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir.1974); *Rainey v. Jackson State College*, 551 F.2d 672 (5th Cir.1977); and *Anthony v. Marion County General Hospital*, 617 F.2d 1164 (5th Cir.1980).

For these reasons, the motion to fix attorney's fees is hereby DENIED.

/s/ John V. Parker
CHIEF JUDGE
MIDDLE DISTRICT
OF LOUISIANA

**APPENDIX "D"**

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

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No. 81-3287
Summary Calendar

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CLIFFORD EUGENE DAVIS, JR., ET AL.,

Plaintiffs.

versus

EAST BATON ROUGE PARISH SCHOOL BOARD, ET AL.,

Defendants-Appellees,

versus

JOHNNIE JONES,

Movant-Appellant.

---

Appeal from the United States District Court
for the Middle District of Louisiana

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(OCTOBER 24, 1983)

Before REAVLEY, RANDALL and WILLIAMS, Circuit Judges.

PER CURIAM:

This appeal is by attorney Johnnie A. Jones, who is one of a number of attorneys who have participated at one time or another in the suit by various plaintiffs to desegregate the public school system of East Baton Rouge Parish, Louisiana. This suit was commenced February 29, 1956, and still continues.

In 1981, Jones filed an affidavit forming the basis of his motion for $350,000 attorneys' fees for 2,800 hours of work on behalf of plaintiffs in this case. The district court denied the request for attorneys' fees in full, and attorney Jones has appealed.

Under 42 U.S.C. § 1988, the district court, "in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs." It should be noted that an award of attorney's fees is discretionary, and by statute the award is to the prevailing "party".

It is instructive to reproduce in full, except for the formalities, the affidavit filed by attorney Jones supporting his claim for attorneys' fees. It reads as follows:

> PERSONALLY CAME AND APPEARED:
> JOHNNIE A. JONES
> who, upon Oath, did depose and say:
>
> That he is one of the [A]ttorneys of [R]ecord in the above entitled and numbered cause; that he has been an attorney of record over the years and, as such, has accumulated more than two thousand eight hundred hours (2,800 hours) in working with this case, and parties, students and persons who were and are involved in this case; but, however, he does hereby fix his fee for

> this long outstanding Civil Rights Action and [C]omplex [L]itigation at One Hundred Twenty-five Dollars per hour for twenty-eight hundred hours ($125.00 x 2800 hours); that, therefore, his fee is in the full and true sum of Three Hundred Fifty Thousand and No/100 Dollars ($350,000.00), which amount the defendants, EAST BATON ROUGE PARISH SCHOOL BOARD, ET AL., owe him under the provisions of "The Civil Rights Attorney's Fees Awards Act of 1976," 42 U.S.C. § 1988.
>
> Signed Johnnie A. Jones

It appears that appellant Jones is one of a substantial number of counsel who have appeared as co-counsel in the East Baton Rouge Parish desegregation case. The last reference to appellant appearing as a representative of one of the parties in the case is in 1974.

The district court found this claim for attorneys' fees totally inadequate under our decision in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717 (5th Cir. 1974). That case establishes the requirements for advancing attorneys' fees claims. Those requirements have been confirmed by us as applicable to civil rights cases. *Rainey v. Jackson State College*, 551 F.2d 672, 676 (5th Cir. 1977). *Johnson* establishes a detailed list of criteria which must be proved by a party claiming attorneys' fees. The district court was correct in finding that this affidavit is totally inadequate to carry that responsibility.

Appellant's reply to this conclusion is that all of his work is contained in the voluminous record which has been built in this case, and his activities can be extracted

from that record. It is remarkable and totally unacceptable that he expects the district court to extract this information from the record. In any event, it is obvious that appellant Jones does not even list his clients, although they are the "parties" who must recover attorneys' fees. We do not know from his affidavit whom he represented, when he represented them, what he did at all in connection with their representation. There is no need to go into a datailed [sic] analysis of all of the Johnson factors in view of the total inadequacy of appellant's claim.

We must conclude that the district court was correct in its discretionary denial of attorneys' fees to appellant Jones.

AFFIRMED.

**APPENDIX "E"**

IN THE

UNITED STATES COURT OF APPEALS

FOR THE

FIFTH CIRCUIT

* * *

NUMBER: 81-3287

* * *

CLIFFORD EUGENE DAVIS, JR., ET AL.,
Plaintiffs-Appellants

versus

EAST BATON ROUGE PARISH SCHOOL BOARD, ET AL.,
Defendants-Appellees

**********

Appeal from the United States District Court for the Middle Sistrict [sic] of Louisiana, Section 'A, ' [sic] the Honorable John V. Parker, Judge Presiding

**********

PETITION FOR REHEARING

**********

Attorneys for
Plaintiffs-Appellants:

JONES & JONES

JOHNNIE A. JONES,
Trial Attorney
Taylor Building, Suite 215
251 Florida Street
Baton Rouge, Louisiana 70801
Telephone: 504/383-8572

IN THE

UNITED STATES COURT OF APPEALS

FOR THE

FIFTH CIRCUIT

* * *

NUMBER: 81-3287

* * *

CLIFFORD EUGENE DAVIS, JR., ET AL.,
and JOHNNIE A. JONES, Attorney,
Plaintiffs-Appellants

versus

EAST BATON ROUGE PARISH SCHOOL BOARD,
ET AL.,
Defendants-Appellees

**********

PETITION FOR REHEARING

NOW INTO COURT, pursuant to Rule 40 of the Federal Rules of Appellate Procedure, comes the appellant, JOHNNIE A. JONES, *pro se*, suggesting that a rehearing be granted herein, for this, to-wit:

-1-

This Court erred in affirming the Judgment of the District Court denying appellant, JOHNNIE A. JONES, one of the attorneys for the original plaintiffs and intervenors in this action, recovery of attorney's fees under 'The Civil Rights Attorney's Fees Awards Act of 1976,' 42 U.S.C. § 1988; and by not remanding the case to the District Court to permit Appellant to meet the essential

requirements to establish his claim to attorney's in this continuing-ongoing, long-outstanding and complexed Civil Rights litigation.

> Where award of attorneys' fee in equal employment opportunities case did not eludicate factors upon which it was based and showed no correlation to facts and figures submitted by plaintiff and where no differentiation was made between experienced and nonexperienced attorneys representing plaintiff and disallowance of 239.5 to 299.5 of 659.5 hours claimed was unexplained, *case was remanded* for reconsideration in light of prescribed guidelines. Civil Rights of 1964, §§ 201 et seq., 706(k), 42 U.S.C.A. §§ 2000a et seq., 2000e-5(g, k). (Underscoring added for emphasis.)

-2-

The case should be remanded to the District Court to permit appellant, JOHNNIE A. JONES, as one of the attorneys for the original plaintiffs and intervenors in this action which commenced February 29, 1956, and still continues, to meet the requirements necessary to establish the detailed list of criteria which must be proved by a party claiming attorneys' fees: and to list the names of the plaintiffs and intervenors Appellant represented by extracting this information from the voluminous record.

> An attorney's record of time is not a talisman. *Raniey v. Jackson State College* (CA5 1977), 551 F. 2d 672, at 677.

It is submitted that under the discretionary-fee-award provision of Title II of the Civil Rights Act of 1964

it was held that successful plaintiffs were entitled to the recovery of fees "unless special circumstances would render such an award unjust." Cf. *Newman* v. *Piggie Park Enterprises, Inc.* (1968) 396 U.S. 400, at 402.

WHEREFORE, upon the above and foregoing grounds, appellant, JOHNNIE A. JONES, prays that the Opinion/Judgment of this court rendered in this action on October 24, 1983, and received by undersigned counsel on October 25, 1983, be annulled, set aside and vacated; that it be replaced with an Opinion/Judgment of this Court remanding the case to the District Court with directions and instructions for the District Court in accordance with the general tenor of this, Appellant's 'Petition for Rehearing.'

Respectfully submitted,

Attorneys for Plaintiffs-
Appellants
and JOHNNIE A. JONES,
Attorney-Appellant *pro se*:
JONES & JONES

DATED: November 4, 1983

/s/ Johnnie A Jones
JOHNNIE A. JONES
Taylor Building, Suite 215
251 Florida Street
Baton Rouge, Louisiana 70801
Telephone: 504/383-8573

CERTIFICATE OF SERVICE

Undersigned counsel of record for the plaintiffs-appellants, Clifford Eugene Davis, Jr., Et Al., and attorney-appellant, Johnnie A. Jones, *pro se*, does hereby certify that a copy of the above and foregoing 'Petition for Rehearing' has this day, by regular United States Mail, first-class postage prepaid, been forwarded addressed as follows:

Mr. John F. Ward
Ward & Hammonds
Attorneys at Law
Quad One, Suite 'C'
1111 South Foster Drive
Post Office Box 65236
Baton Rouge, Louisiana 70806
Telephone: 504/923-3462

Baton Rouge, Louisiana, this 4 day of November, 1983.

/s/ Johnnie A Jones
JOHNNIE A. JONES
Jones & Jones, Attorneys at Law
Taylor Building, Suite 215
251 Florida Street
Baton Rouge, Louisiana 70801
Telephone: 504/383-8573

**APPENDIX "F"**

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

---

No. 81-3287

---

CLIFFORD EUGENE DAVIS, JR., ET AL.,

Plaintiffs,

versus

EAST BATON ROUGE PARISH SCHOOL BOARD, ET AL.,

Defendants-Appellees,

versus

JOHNNIE JONES,

Movant-Appellant.

---

Appeal from the United States District Court for the Middle District of Louisiana

---

ON PETITION FOR REHEARING

(November 21, 1983)

Before REAVLEY, RANDALL and WILLIAMS, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby denied.

ENTERED FOR THE COURT:

/S/ illegible
United States Circuit Judge

**APPENDIX "G"**

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

| | | |
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| CLIFFORD EUGENE DAVIS, JR., ET AL | ) | CIVIL ACTION |
| VERSUS | ) | NO. 56-1662-A |
| EAST BATON ROUGE PARISH SCHOOL BOARD, ET AL | ) | |

**RULING ON MOTIONS**

This matter is before the court on a motion by Johnnie A. Jones for an award of attorney's fees and a motion by the City of Baker to intervene.

**I. Motion by Jones for Attorney's Fees**

Johnnie Jones contends that he is entitled to compensation for some 4,850 hours of legal services that he performed for the plaintiffs in this case commencing on September 27, 1962 through the preparation of the motion at hand. Jone's [sic] affidavit indicates that approximately 4660 hours relate to services he performed through April of 1981. Approximately 155 hours were spent on an unsuccessful appeal of a prior motion by Jones for attorney's fees in May through June of 1981. Additionally, Jones claims to have expended 35 hours in his preparation of the motion presently before the court.

The question of whether Jones is entitled to compensation for services rendered through April of 1981 is a question that has been finally adjudged through the United States Supreme Court. See, **Davis v. East Baton**

**Rouge Parish School Board**, 719 F2d 403 (5th Cir. 1983), cert. denied, 469 U.S. 1227, 105 S.Ct. 1224, 84 L.Ed.2d 364 (1985). The court agrees with the School Board that the request for fees through April of 1981 is a matter that is res judicata.

The request for fees connected with the 1981 appeal is clearly unwarranted in view of the fact that the Fifth Circuit found his prior submission to be "totally inadequate". Consequently, the request for fees connected with the present motion is likewise unfounded.

## II. Motion by City of Baker to Intervene[1]

The City of Baker contends that it is entitled to intervene of right under Fed. Rule Civ. P. 24(a)(2) because it has a cognizable interest in this matter that will not be adequately represented by the present parties to this lawsuit. In its proposed petition of intervention, the City of Baker identifies its purpose or interest in intervening as follows:

> "(1) to establish that the creation of its independent school system will not impede the creation of unitary system(s) in the Parish; and (2) to participate in submitting desegregation plan(s) consistent with the existence of an independent system in the City of Baker." Proposed Petition of Intervention, paragraph five.

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[1] On July 31st, the City of Baker filed a "request to delay ruling" on its motion to intervene for an additional ninety days. The court finds no reason for delaying any further.

The City argues that the "Baker School system", which has been authorized by constitutional amendment[2] and statute[3], will not impede the dismantling of the former dual system in East Baton Rouge Parish. The City of Baker argues that the "Baker School system" is presently in effect and its "status" should be addressed now. According to the City of Baker, if it is not allowed to intervene it will "likely be enjoined from proceeding by one of the parties presently in this lawsuit. Alternatively, the City of Baker moves for permissive intervention based upon the same arguments.

The opponents argue that the motion for intervention should be denied because the issue is not ripe for adjudication. Opponents argue that the City of Baker must at a minimum: (1) develop a single member district election plan; (2) obtain preclearance from the Department of Justice; and (3) hold an election for school board members in the fall of 1998. According to opponents, it is purely speculative what the "Baker school system" will be prior to the time that there is a new school board in place because only the school board is empowered to establish a plan for the operation of schools in Baker. Consequently, it would be premature for the court to consider the questions raised in the proposed intervention.

The court agrees with the present parties to this lawsuit that the City of Baker itself does not have a

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[2] Article VIII, Sec. 13(D) of the Louisiana Constitution.

[3] Act 973 of the 1995 Regular Session of the Louisiana Legislature.

"direct, substantial, legally protectable interest" in these proceedings. Act 973 makes it plain that the Baker School Board will be the entity authorized to adopt rules and regulations pertaining to the Baker school system. La. R.S. 17:72(H). It is well established that an applicant for intervention of right must have a "direct, substantial, legally protectable" in the litigation. **New Orleans Public Service, Inc. v. United Gas Pipe Line Co.,** 732 F.2d 452 (5th Cir. 1984), cert. denied, 469 U.S. 1019, 105 S.Ct. 434, 83 L.Ed.2d 360 (1984). The interest must be one that the substantive law recognizes as belonging to the applicant, Id, at p. 464.

The first reason given by the City of Baker for its proposed intervention is to establish that the creation of its independent school system will not impede the creation of unitary system(s) in the Parish. Act 973 authorizes the City to develop election districts and order elections for the Baker School Board. That is the extent of the legal authority given the City of Baker. Act 973 makes it plain that the Baker School Board will be the entity authorized to adopt rules and regulations pertaining to the establishment and operation of the Baker School system. La. R.S. 17:72(H). The city is anticipating that a suit will be filed to enjoin implementation of Act 973. As yet, however, there is no actual controversy relating to the creation of election districts for members of the Baker School Board and the holding of elections in the fall of 1998. Thus, it is clear that the City of Baker has no legally protectable interest in any issue presently being litigated in these proceedings

The second reason advanced by the City of Baker is to participate in submitting a desegregation plan to the

court. As noted above, the City of Baker has no authority to act as a school boar. The Baker School Board, rather than the City of Baker, will be the legal entity authorized to establish a plan for the operation of public schools in Baker. Consequently, it is clear that the City of Baker has no cognizable interest belonging to it that would support an intervention or right.

In its reply brief, the City of Baker contends that the "Baker school system" is in existence because Act 973 provides that: "[o]n the effective date of this Section, there shall be established a municipal school system in the city of Baker." There is no dispute that the Act became effective upon the passing of the constitutional amendment last fall. The City argues that this legislation created a school system and a school board for the City of Baker despite the fact that no school board members have yet been elected. According to the City of Baker, the East Baton Rouge Parish school system no longer includes the territorial jurisdiction of the City of Baker. It contends that its presence is "absolutely required" to have a complete adjudication of this case. In short, the City contends that it is the proper party to act for the Baker School Board until its members are elected.[4]

While the Act does purport to establish a municipal school system in the City of Baker as of the passage of the constitutional amendment last fall, the reality is that there is no Baker school system in place. There has to be a plan

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[4] The City additionally argues that the Education Commission for the Baker school system is effectively operating the Baker school system. The court finds no merit to this argument in fact or in law.

established by the proper governing authority, i.e. the Baker School Board, before this court has anything to rule on. The Act makes it plain that the East Baton Rouge Parish School Board has until January 1, 1997, to develop an election plan that excludes the City of Baker. The Legislature has not shortened the length of the terms of the members presently on the East Baton Rouge School Board and they continue to represent the entire parish until their successors are elected. As the City itself observes, the Act merely authorizes the City to "set up" the Baker school system. As a practical matter, until the Baker school system is "set up", there is nothing for this court to rule on with respect to that system.

The court observes that the City has presented no separate argument relating to its request to permissively intervene. One of the things that the City would have to establish under Fed. Rule Civ. P. 24 (b) is that it has a claim or defense that has a common question of law or fact with the main action. For the reasons noted above, the court finds that the request for permissive intervention should likewise be denied.

In short, the court finds that City the [sic] Baker has no right to intervene in these proceedings. The matter may be revisited, however, if and when a Baker School Board, having the power to sue and be sued, is established and moves for intervention.

**III. Conclusion**

Accordingly, the motion by Jones for attorney's fees is hereby DENIED and the motion by the City of Baker to intervene is hereby DENIED.

Baton Rouge, Louisiana, September 18, 1996.

/s/ John V. Parker
JOHN V. PARKER,
CHIEF JUDGE
MIDDLE DISTRICT OF
LOUISIANA

**APPENDIX "H"**

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

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No. 96-31074
Summary Calendar

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CLIFFORD EUGENE DAVIS, JR. and
UNITED STATES OF AMERICA,

Plaintiffs,

JOHNNIE A. JONES,

Movant-Appellant,

versus

EAST BATON ROUGH PARISH
SCHOOL BOARD, a Corporation,

Defendant-Appellee.

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Appeal from the United States District Court for
the Middle District of Louisiana
(56-CV-1662)

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(Filed Sep. 10, 1997)

Before REAVLEY, JOLLY and HIGGINBOTHAM, Circuit Judges.

PER CURIAM:*

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* Pursuant to 5TH CIR. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Johnnie Jones appeals an order denying his request for over $1.2 million in attorney's fees for his work in this decades-old desegregation suit, over which the district court has retained jurisdiction. We conclude that we have appellate jurisdiction under the collateral order doctrine, *see Walker v. U.S. Dept. of Housing and Urban Dev.*, 99 F.3d 761, 766-67 (5th Cir. 1996), and affirm.

In 1981 Jones filed a similar request for fees. The district court denied the motion, reasoning that Jones had not complied with the requirements of *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974), and related cases. Jones appealed the order and we affirmed in an unpublished opinion. *Davis v. East Baton Rough* [sic] *Parish School Bd.*, No. 81-3287 (5th Cir. Oct. 24, 1983). We agreed with the district court that his fee application was "totally inadequate" under *Johnson. Davis, supra,* at 3.

In 1996 Jones filed a motion for attorney's fees which is the subject of the present appeal. The district court properly denied the motion, since both the district court and this court are bound by the prior appellate decision under the law of the case doctrine. That doctrine "precludes reexamination of issues decided on appeal, either by the district court on remand or by the appellate court itself upon a subsequent appeal." *Quest Medical, Inc. v. Apprill,* 90 F.3d 1080, 1094 (5th Cir. 1996).

Recognized exceptions to the law of the case doctrine are that "evidence in the subsequent trial is substantially different, the prior decision was clearly erroneous and would work manifest injustice, or controlling authority has in the interim made a contrary rule of law applicable." *Id.* The only conceivable exception which might

apply here is that Jones has somehow augmented his fee request with additional evidence.

The renewed fee request, however, remains totally inadequate to support an award. We noted in the prior appeal that Jones "does not even list his clients, although they are the 'parties' who must recover attorneys' fees." *Davis, supra,* at 3. In his renewed motion for fees, Jones again fails to list which plaintiffs he represented, fails to move for fees on their behalf, and instead requests fees as "movant in proper person." The fee request fails to delineate, among other *Johnson* factors, the novelty and difficulty of the questions presented in the case, whether the fee agreement with the clients was fixed or contingent, or the results obtained. *See Johnson,* 488 F.2d at 718.

While, unlike the first fee request, Jones breaks down his work into various dated entries in an affidavit, those entries are implausible on their face. Many of the entries indicate that Jones worked more than 24 hours in a single day. By way of example, Jones claims he spent 157.5 hours on July 23, 1970 (at a requested rate of $250 an hour) on a "memorandum opinion and order." Further, the only work Jones claims to have done after April 16, 1981, the date of his first fee motion, involved his unsuccessful quest for attorney's fees. Accordingly, we follow our prior decision.

AFFIRMED.

**APPENDIX "I"**

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
BATON ROUGE DIVISION

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|---|---|
| CLIFFORD EUGENE DAVIS, JR., a minor by his father and next friend, Clifford Eugene Davis, Sr., et al<br>Plaintiffs,<br>versus<br>EAST BATON ROUGE PARISH SCHOOL BOARD, a corporation, and LLOYD FUNCHESS, as Superintendent of Public Schools in East Baton Rouge Parish<br>Defendants | NO. 1662<br>CIVIL ACTION |

## JUDGMENT

This cause having come on for hearing on the 29th day of April, 1960, on plaintiffs' motion for summary judgment, and the court being of the opinion that the motion for summary judgment should be granted,

IT IS ORDERED, ADJUDGED AND DECREED that the defendant East Baton Rouge Parish School Board, its agents, its servants, its employees and successors in office, and those acting in concert with them, be, and they are hereby, restrained and enjoined from requiring segregation of the races in any school under their supervision, and from engaging in any and all action which

limits or affects the admission to, attendance in, or education of plaintiffs or any other negro child similarly situated in schools under defendants' jurisdiction, on the basis of race and color, from and after such time as may be necessary to make arrangements for admission of children to such schools on a racially non-discriminatory basis with all deliberate speed, as required by the decision of the Supreme Court in *Brown v. Board of Education of Topeka*, 349 U.S. 294.

This court retains jurisdiction of this cause for the purpose of entering such further orders or granting such further relief as may be necessary to bring about compliance with this decree.

May 25, 1960

/s/ J. Scully Wright
UNITED STATES
DISTRICT JUDGE